

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

**APPEAL FROM ORDER NO. 724 OF 2024
WITH
INTERIM APPLICATION NO. 13866 OF 2024**

M/s. Agrawal Warehouse Solution Private Limited ...Appellant
Versus
M/s. S. A. Logistics Thr Its Partner And Authorized
Signatory Mrs. Geetita Dharam Agarwal ...Respondent

Mr. Kailash R. Tiwari a/w. Mr. Premlal Krishnan for the Appellant.
Mr. Nishant Chothani a/w. Mr Amit Hailkar, Mr. Yash Chedda i/b. Maniar
Srivastava Associates for the Respondent

CORAM : M. M. SATHAYE, J.

DATED : 2nd DECEMBER 2024

P.C.:

1. Heard learned Counsel for the Appellant/Original Defendant and learned Counsel for the Respondent/Original Plaintiff.
2. By the impugned order dated 03/08/2024 passed below Exhibit-5 in Special Civil Suit No. 31/2024, the Application filed by the Respondent is allowed, thereby restraining the Appellant from creating third party interest in the subject matter property.
3. Learned Counsel for the Appellant submitted that the time of 60 days agreed to complete the transaction under agreement to sell was essence of the contract and transaction is not completed in time. Inviting this Court's attention to clause (6) of the notice reply dated 14.03.2023 issued on behalf

of the Appellant, it is submitted that a clear stand was taken that the Respondent is seeking to resurrect a transaction which is dead and buried for over four years. He submitted that in the facts and circumstance of this case, the Respondent can be, at the most, entitled to refund of earnest money paid and not a specific performance. He submitted that Appellant is ready and willing to refund/ deposit the amount in the Court.

4. On the other hand, learned Counsel for the Respondent submitted that the agreement in question is a registered document under which the Respondent has paid substantial amount as earnest money and other payments, totaling to Rs.1,50,00,000/- to the Appellant out of total consideration agreed of Rs.2,52,15,000/- He submitted that once the execution of the agreement and receipt of earnest money or other amounts is not disputed, learned Trial judge has rightly granted injunction and it need not be interfered with.

5. I have considered the rival submissions and also perused the impugned order.

6. It is not disputed that a registered agreement of sell is executed by the Appellant and the receipt of earnest money and other amount thereunder, is also not disputed. As rightly pointed out learned Counsel for the Respondent, perusal of the email communication, as late as in January, 2022 would indicate that parties were discussing a deadline and the request for payment of balance money or execution of the document was requested. Nothing is shown to the Court, at least at this stage, that there was clear refusal from the Appellant's side prior to 3 years of filing of the suit. Learned Counsel for the Respondent has in fact indicated from the last notice reply

dated 14.03.2023 issued by the Appellant that despite allegations of breach of agreement, the transaction or agreement is not terminated.

7. In that view of the matter, the impugned order restraining the Appellant, is neither illegal nor perverse nor there is any error apparent on the face of the record. The impugned order is passed on the basis of material available on record. Hence no interference is called for.

8. The Appeal from Order and pending Interim Application are accordingly dismissed. No costs.

(M. M. SATHAYE, J.)