

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Digitally signed
by
HUSENBASHA
RAHAMAN
NADAF
Date: 2024.11.13
20:29:44 +0530

INTERIM APPLICATION NO. 14475 OF 2024
IN
APPEAL FROM ORDER NO. 775 OF 2024

M/s. Shivshankar Builders And Developers, Through
Its Partner Satish Shivshankar Tripathi ...Applicant/Appellant
Versus
Eknath Sadashiv Kandpile(since deceased)
Through LRS And Others ...Respondents

Mr. Sachin Dhakephalkar, for Applicant/Appellant.
Mr. Simil Purohit, Senior Advocate, Mr. Vishal Pattabiraman i/b. Ms.
Anushka Jain, for Respondent Nos.5 and 6.

CORAM : M.M. SATHAYE, J.

DATE : 12th NOVEMBER, 2024

P.C. :

1. Heard learned counsel for the Applicant / Appellant and learned Senior Advocate for Respondent Nos. 5 & 6. Issue notice to Respondents, returnable on **10/12/2024**. In addition to Court notice, private notice is allowed. Learned counsel waives service for Respondent Nos. 5(5a to 5c) and 6.

2. By this Appeal from Order, the Appellant/original Plaintiff has challenged an order dated 14/10/2024 passed by Civil Judge, Senior Division, Panvel below Exh.97 in S. C. Suit No. 411 of 2018 ('the said suit' for short) by which a prayer of maintaining *status quo* in respect of the suit property was rejected.

3. Since the *ad-interim* prayer is seriously pressed by the Appellant and opposed with equal seriousness and vehemence by Respondent Nos. 5 & 6 at *ad-interim* stage, this order is necessitated.

4. It is necessary to record at the outset that the application Exh.97, when read in whole, turns out to be an application applying for urgent relief as provided in clause 6 of the minutes of order dated 04/10/2024. The Order dated 04/10/2024 was passed when the present Appellant and present contesting Respondent Nos. 5a to 5c & 6 were present before the Court disposing off Writ Petition No. 13297 of 2024.

5. The matter arises out of the suit for specific performance, declaration and perpetual injunction in respect of alleged 1000 sq. mtrs. undivided share out of 4000 sq. mtrs. out of land allotted to Defendant No. 1 by CIDCO under 12.5% scheme at Kamothe, Tal. Panvel, Dist. Raigad, Navi Mumbai. The Appellant filed the said suit and also filed application below Exh.5 seeking an interim injunction therein, against the original Defendant No. 1 (now through his legal heirs) which was rejected by an order dated 03/11/2018. This order was challenged by the Appellant in Appeal from Order No. 194 of 2019 and during the course of the argument before this Court, the learned counsel then appearing on behalf of the original Defendant No. 1 (vendor of the present Respondent Nos. 5a to 5c and 6) submitted that the suit property is in their possession and they have not created third party rights and have not started any construction activities. Based on this submission, which was indeed a statement of fact as on that date, the present Appellant withdrew the Appeal from

Order with liberty to file an application in Trial Court for carrying out amendment in the plaint and move for *ad-interim* relief.

6. It further appears that legal heirs of the original Defendant No.1 had filed an application under Order VII Rule 11(d) of the Civil Procedure Code, 1908 (for short “C.P.C.”) which was rejected and that order was challenged by the legal heirs of Defendant No. 1 by filing Civil Revision Application No. 589 of 2019, wherein the proceedings of the said suit were stayed. This civil revision application was finally disposed of by an order dated 26/09/2023 thereby confirming rejection of the application under Order VII Rule 11.

7. It further appears that this order was carried in the Hon’ble Supreme Court by the legal heirs of Defendant No. 1, which order was not interfered. However, as can be seen from an order dated 11/12/2023, learned counsel appearing for the parties in the Hon’ble Supreme Court, expressed that the parties may be referred for mediation and it was observed that the Trial Court, prior to proceeding in the matter, without prejudice, shall proceed to refer the matter for mediation.

8. It further appears that thereafter, legal heirs of Defendant No. 1 filed an application below Exh. 90, which was allowed by an order dated 09/08/2024 and the matter was referred to the mediation. This order referring the matter to mediation, was challenged by the present Appellant before this Court by filing Writ Petition No.13297 of 2024 in which this Court, has recorded in order dated

24/09/2024 that it was pointed out to the Court that in the *interregnum* the legal heirs of Defendant No. 1 are creating further third party rights and such third party rights are created in favour of at least two additional parties. In light thereof, this Court, without going into the merits of the matter, held that it would be appropriate to grant order of *status quo*. Hence, original Defendants to the suit were specifically directed and injuncted by this Court from creating any third party rights in the suit property.

9. The learned Advocate for legal heirs of Defendant No. 1, in that matter, informed the Court that additional parties other than the present Defendants would be interested parties and based on this, this Court again categorically observed that the parties are directed to maintain 'absolute *status quo*' in respect of the suit property. Leave was granted to the present Appellant to implead proposed Defendants. Amendment was permitted to be carried out forthwith and the present Appellant was directed to serve copy of the Petition along with amended writ petition on all the Respondents who were directed to remain present.

10. At this juncture, it is necessary to note that after the Appeal from Order No. 194 of 2019 was withdrawn by the present Appellant, during the pendency of the suit and with Defendant No. 1 having knowledge of the said suit and its pendency, Defendant No. 1 executed an agreement (stated to be a tripartite agreement with CIDCO as party) assigning the rights of the Defendant No. 1 in favour of Respondent Nos. 5a to 5c and 6 in respect of 4000 sq. mtrs. area. It is stated across the bar by the learned counsel for the

Appellant that the document executed between Defendant No. 1 and present Respondent Nos. 5a to 5c and 6 has a recital/clause disclosing the existence of the said suit, meaning thereby that Respondent Nos. 5a to 5c and 6 have accepted the subject matter property with the knowledge of its litigation under the said suit.

11. In the aforesaid factual backdrop, when the present Appellant was pressing Writ Petition No.13297 of 2024, for reasons best known to Respondent Nos. 5a to 5c and 6, which were obviously based on the dynamics of the litigation as they existed on that day, agreed under clause 6 of Minutes of Order dated 04/10/2024 that *status quo* in respect of suit plot granted by this Court vide order dated 24/09/2024 shall continue for a period of 1 week from that day (04/10/2024). It was agreed between the contesting parties including Respondent Nos. 5a to 5c and 6 that the present Appellant shall have liberty to apply for urgent relief during pendency of the application below Exh.38 seeking *ad-interim* relief, which was to be heard and disposed by the learned Trial Court in expeditious manner preferably within a period of 4 weeks. The minutes of order specifically provided that it will not preclude the learned Trial Court from passing appropriate *interim* or *ad-interim* relief pending hearing of the application below Exh.38, 'even in the absence of completion of pleadings' which order shall be passed on its merits and without being influenced by order dated 24/09/2024 passed in that petition.

12. After reading the minutes of order, the overall picture which emerges in the opinion of this Court, is that, by way of concession in

the facts and circumstances of this case, *status quo* was accepted by Respondent Nos. 5a to 5c and 6 for a limited period of time with liberty to the present Appellant to press the matter for urgent *ad-interim* relief and the learned Trial Court was given full liberty to pass appropriate orders even in absence of completion of pleadings.

13. The present Appellant made an unsuccessful attempt thereafter by filing Review Petition No. 134 of 2024 to challenge this order passed by way of minutes of order. It is material to note that while disposing of this review petition as withdrawn on 10/10/2024, in paragraph 3, this Court kept all contentions of the present Appellant open and it was provided that if the present Appellant approaches the learned Trial Court tomorrow itself, the learned Trial Court shall consider exigency of the Petitioner and pass appropriate orders.

14. Indeed the next day, on 11/10/2024, an application below Exh.97 was filed by the present Appellant praying for maintaining *status quo* in respect of the suit property. On 11/10/2024 i.e. on the same day, present Respondent No. 5 sought time to file reply. The order of *status quo* as accepted under minutes of the order was passed on 04/10/2024 for a period of 1 week which admittedly expired on 11/10/2024. However, in the *interregnum*, in defiance of the order passed by this Court under minutes of order duly signed on behalf of Respondent Nos. 5a to 5c and 6, it appears at least *prima facie* at this stage, from 2 Index-II produced by the Appellant, that Respondent No. 5 partnership firm has executed two registered documents dated 07/10/2024 and 09/10/2024 in favour of third persons, in respect of two flats in the construction on the subject

matter property. Learned counsel for Respondent Nos. 5 and 6 submits that Index-II produced by the present Appellant about sale of flats on 07/10/24 and 09/10/24 have come on record only in the present Appeal from Order. It is noted. Learned senior counsel for Respondents Nos. 5 & 6 submitted that his client would need an opportunity to explain in what circumstances two flats are sold during pendency of the *status quo* order to the said third party. Respondent Nos. 5 & 6 will certainly have that opportunity in this Appeal from Order.

15. In the aforesaid facts and circumstances, Mr. Dhakephalkar learned counsel for the Appellant pointed out that the learned Trial Court has rejected the application below Exh. 97 observing in paragraph 8 that there is no amendment in the prayer clause of the suit and the present Respondent Nos. 5 and 6 are not yet added as party. Interestingly in the next sentence, the learned Trial Judge has held that *'today, on the basis of the order passed in Writ Petition No.13297 of 2024, the Plaintiff (present Appellant) has added Defendants Nos. 5 and 6 as party to the suit but there is no amendment in the prayer clause of the suit'*. It is noted that Respondent No. 5 was in fact appearing as party seeking time to file reply.

16. On perusal of the impugned order, *prima facie*, hyper-technical view is taken by the learned Trial Judge about Respondent Nos. 5 & 6 being not party or necessary amendment not being carried out. Obviously, the learned Trial Judge lost sight of this Court's order dated 04/10/2024 which provided that the minutes of the order

shall not preclude the learned Trial Court from passing appropriate *interim* or *ad-interim* relief pending the hearing as the application below Exh.38 (which indeed was the stage under the Application Exh.97), even in absence of completion of pleadings.

17. Learned senior counsel for Respondent Nos. 5 & 6 has submitted that the *status quo* was accepted to operate only for a period of 1 week which had already expired on the date when the impugned order was passed. He submitted that the application which was filed by the present Appellant below Exh.97 was not really an application for injunction but it was an application u/s. 94 of the C.P.C. In this respect, it is material to note the settled position of law that an application is not to be interpreted on the basis of titles and headings but are to be considered as a whole on its complete reading. Argument of the learned counsel for Respondent Nos.5 & 6 that application Exh.97 is u/s. 94 of the CPC is only stated to be rejected. Reading of this application shows that in essence, the present Appellant/Plaintiff was expressing apprehension that the Respondent Nos.5 & 6 are developing the suit property and trying to sell the flats as well as shops in the suit property and trying to create third party interest and therefore if such third party rights and further encumbrances are created, the Plaintiff's legal right may get frustrated and Plaintiff may suffer irreparable loss and harm. With such specific pleadings, a prayer is made for *status quo*. This application is therefore an application for urgent relief as provided under the minutes of order.

18. Learned counsel for Respondent Nos. 5 and 6 also submitted

that after the original application for interim injunction (Ex.5) was rejected on merits and the Appeal from Order challenging that order, was withdrawn by the Appellant, he has not filed any other affidavit showing change in the circumstances. The said argument is rejected only on the ground that the said argument was available to Respondent Nos. 5 and 6 who were duly represented by the lawyer on the day when the minutes of order was passed on 04/10/2024, when Respondent Nos. 5 and 6 chose to accept an order of the *status quo* before this Court for a period of 1 week.

19. Learned senior counsel for Respondent Nos. 5 & 6 also submitted that the present Appellant was free to press his original application Exh.38 as provided in minutes of order but instead he filed a defective application Ex. 97 without proper supporting affidavit and without carrying out amendments.

20. It is settled position under the procedural law under C.P.C. that when an order is passed by the Court permitting an amendment or addition of party, its actual implementation in physical form is a ministerial act. Therefore in my *prima facie* view, no fault can be found with the procedural shortcomings, if any, that existed in the application below Exh.97, in the teeth of what was agreed under the minutes of order. If the learned Trial Judge was given complete liberty to pass appropriate *interim* and *ad-interim* relief pending hearing of application below Exh.97 even in absence of completion of pleadings, this Court fails to understand why the order was not passed on 11/10/2024 itself. The *status quo* was in existence till this day. Within 4 days of lapse of *status quo*, the impugned order is

passed.

21. Also when parties through their counsel in the Hon'ble Supreme Court express that mediation should be explored, such technical and convenient arguments are found a little odd.

22. In the aforesaid facts and circumstances, the argument of equitable consideration does not lie in the mouth of Respondent Nos. 5 and 6, especially when the order of *status quo* as agreed in minutes of order dated 04/10/2024 is *ex-facie* flouted by Respondent Nos. 5 & 6 by executing two registered sale deeds in favour of third parties.

23. Hence, the following *ad-interim* order is passed.

(A) Respondent Nos. 5a to 5c and 6 shall maintain complete *status quo* in respect of the subject matter property till this Interim Application is heard.

(B) The aforesaid order will not preclude the learned Trial Court from proceeding with the hearing of the application below Exh.38.

(C) Stand over to 10/12/2024.

24. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)