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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 77 OF 2024
IN
INTERIM APPLICATION (LODG.) NO. 15697 OF 2023
IN
SUIT (L.) NO. 15696 OF 2023
WITH
INTERIM APPLICATION (LODG.) NO. 23248 OF 2023
(For injunction & stay of Impugned Order)
IN
APPEAL NO. 77 OF 2024

1. ACME Enterprises
2. Champallal Kishorchandra Vardhan
Partner of Appellant No.1
Versus ...Appellants

1. Deputy Registrar, Co-operative Societies (2),
Eastern Suburb, Mumbai, and
Competent Authority
& 25 Ors. ...Respondents

Mr. Aspi Chinoy, Senior Advocate with Mr. Ashish Kamat, Senior Advocate, Mr. Aseem Naphade, Counsel a/w. Ms. Kausar Banatwala, Ms. Riya Thakkar i/b Tushar Goradia, for Appellants.

Mr. Himanshu Takke, AGP, for Respondent No.1.

Mr. Mayur Khandeparkar with Mr. Vikramjit Garewal, Mr. Ajinkya Udane, Mr. Vinayak Pandit, Ms. Maitreyee Garade, for Respondent No.2.

Mr. G.O. Giri i/b Ms. Komal Punjabi, for Respondent Nos 20 and 21-MCGM.

CORAM: B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.

Date : December 10, 2024

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1. The above Appeal is filed against the order passed by the Learned Single Judge of this Court dated 7th August, 2023 (“**Impugned Order**”). By the Impugned Order, the Learned Single Judge rejected the prayer for ad-interim relief sought by the Appellant, who were the Original Plaintiffs before the Learned Single Judge. The Appellants filed the above Suit as well as the Interim Application *inter alia* seeking a declaration that the order passed by Respondent No.1 (Deputy Registrar, Co-operative Societies) directing execution of the unilateral deemed conveyance is illegal and invalid, being contrary to the provisions of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, “**MOFA, 1963**”). It appears that although at the time of filing of the Suit and the Interim Application, the Appellants had sought a direction to Respondent Nos. 22 to 24, not to register the unilateral deemed conveyance, on 26th June, 2023, the unilateral deed of conveyance was executed, and accordingly, the Appellants were constrained to amend the pleadings to appropriately modify the prayers in the Plaint as well as the Interim Application.

2. In the Interim Application filed by the Appellants for grant of urgent ad-interim reliefs, what was basically pressed was seeking a stay of the Stop

Work Notice dated 6th/7th June, 2023 issued by Respondent No. 21, i.e., the Deputy Chief Engineer of Respondent No. 20. The other relief sought at the ad-interim stage was to seek a stay of the unilateral deed of conveyance executed in favour of Respondent No.2-Society.

3. The Learned Single Judge, by a detailed order passed on 7th August, 2023, examined all these aspects. The findings of the Learned Single Judge can be found from paragraph 21 onwards. The Learned Single Judge recorded that as to whether urgent ad-interim reliefs can be granted, he considered the documents placed on record with the pleadings as well as the additional affidavit of the Appellants as also the reply affidavits filed on behalf of Respondent No.2-Society and Respondent No.20 - Municipal Corporation. The Learned Single Judge noted that a serious contention is raised on behalf of the 2nd Respondent-Society that permitting further construction of building No.1 would create complications for the reason that the Appellants will be facilitated in carrying out further construction, although the material on record sufficiently demonstrated that the present level of construction itself has consumed the available Floor Space Index (“**FSI**”) for building No.1. The Learned Single Judge also took note of a statement made by the Appellants in the Plaint, and more particularly paragraph 79 of the Plaint, in which the Appellants stated the development

does not utilize additional inherent FSI which has become available on account of change in law / FSI norms etc. The Learned Judge noted this case, and thereafter, came to the conclusion that from the record it would appear that the Appellants were seeking to take advantage of change in law and FSI norms, which was clearly in the teeth of the statement made by the Appellants in paragraph 79 of the Plaint.

4. The Learned Single Judge also noted the sheet anchor of the contentions raised on behalf of the Appellants regarding the division / sub-division of plot D into two plots i.e. plot 'D' and plot 'D1'. The Learned Single Judge, after perusing the order dated 25th September, 2014, issued by the Executive Engineer of Respondent No. 20 – Municipal Corporation, which divided the aforesaid plot, found that two additional conditions were required to be satisfied by the Appellants for such division to come into effect. The Learned Single Judge recorded that the Appellants have not been able to demonstrate before the Court that both the additional conditions were satisfied. As a consequence, the Learned Single Judge held, that the Appellants, at the ad-interim stage, cannot be permitted to rely upon the division of the said plot to claim that the unilateral deed of conveyance could not have been issued in favour of the 2nd Respondent Society for the entire plot D.

5. This apart, the Learned Single Judge, also came to a *prima facie* finding that as per the law laid down by this Court in several decisions, there was no proper and complete disclosure on the part of the Appellants regarding the entire layout of Plot D when the MOFA agreement was entered into with the flat purchasers of the 2nd Respondent Society. In this regard, the Learned Single Judge relied upon clause 8 of the MOFA Agreement, which clearly had a blank in relation to the Floor Space Index available in respect of Plot D. The Learned Single Judge found, at least at the ad-interim stage, that this would not amount to a disclosure as contemplated under Section 3 read with Section 4(1A) of the MOFA, 1963. In these circumstances, the Learned Single Judge declined to grant any ad-interim relief and listed the Interim Application for final hearing.

6. In order to ascertain whether the discretion exercised by the Learned Single Judge was in accordance with the principles laid down by the Hon'ble Supreme Court in the case of Wander Ltd. Vs. Antox India Pvt. Ltd.¹ (“**Wander Ltd.**”) as well as a later judgement in Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi & Ors.², we heard Mr. Chinoy, the Learned Senior Counsel appearing on behalf of the Appellants as well Mr. Khandeparkar, the Learned Counsel appearing on behalf of the 2nd Respondent-Society at great

¹ (1990) Supp. SCC 727

² Civil Appeal No. 13001 of 2024, dated 22 November, 2024

length. After hearing them at great length, we are not persuaded to hold that the Learned Single Judge has in any way exercised his discretion contrary to the principles laid down by the Hon'ble Supreme Court in ***Wander Ltd.*** We find that the Learned Single Judge, after going through the material on record, came to the conclusion that at the ad-interim stage, the Appellants are not entitled to the reliefs sought for. Since the reasons for refusing the relief have been set out in the Impugned Order, we need not burden this judgment by reproducing the relevant portions. Suffice it to state, that the Learned Single Judge, after applying his mind to the facts of the case, chose not to exercise his discretion in favour of the Appellants and declined to grant any ad-interim relief.

7. Considering that the Interim Application is still pending before the Learned Single Judge, and which would be heard finally, we are further fortified in our view that the above Appeal ought to be dismissed and the Impugned Order ought not to be interfered with. In these circumstances, we dismiss the above Appeal with a clarification. The clarification is that the ad-interim order passed in this Appeal on 20th March, 2024 shall continue till the disposal of the Interim Application filed by the Appellants and which is pending before the Learned Single Judge.

8. We are also informed that the 2nd Respondent Society has filed its independent Suit in relation to the subject matter which forms a part of this Appeal. In that Suit, an Interim Application is also filed. Since the arguments may overlap in both the Interim Applications, we are of the view that it would be expedient if the Learned Single Judge hears the above Interim Application (Interim Application No. 15697 of 2023), as well as the Interim Application filed by the 2nd Respondent Society (in its Suit), together. The Learned Single Judge is requested to hear both the Interim Applications as expeditiously as possible, time permitting.

9. The Appeal is accordingly dismissed. No costs.

10. It is clarified that since this Appeal impugns an ad-interim order, when the above Interim Application is heard, the same shall be decided on its own merits and in accordance with law uninfluenced by the observations made in the Impugned Order. However, this does not mean that the Learned Single Judge is in any way precluded from coming to the same conclusions as that in the Impugned Order.

11. In view of the disposal of the Appeal, nothing survives in Interim Application No. 23248 of 2023 filed therein and the same is disposed of.

12. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[B.P. COLABAWALLA]