



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Appeal Against Order No. 3 of 2024

[Kamlesh S/o Suresh Sharma ..vs.. M/s Aarambh Builders and Developers, a partnership firm
and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. S. Sitani, Advocate for the appellant

CORAM : ANIL L. PANSARE J.

DATED : 08-02-2024

The appellant – original plaintiff is aggrieved by order dated 12-1-2024 passed below Exhibit 5 by 5th Joint Civil Judge Senior Division, Nagpur in Spl. C. S. No. 901/2023 thereby rejecting the application seeking temporary injunction to restrain the respondents – defendants from creating third party interest in the suit property.

2. Learned counsel for the appellant submits that the respondents are builders and developers. They have carved out plots by demarcating lay out in Khasara No. 21 admeasuring 0.72 HR situated at Mouza Shankarpur, Tahsil and District Nagpur. The respondents have allegedly agreed to sell 18 plots for total consideration of Rs. 3.8 Crores approximately. The appellant has paid an amount of Rs. 18 Lakhs. The respondents have issued receipts dated 5-4-2022 and assured the appellant of executing agreement to sale, once the respondents purchased the land from the then vendors and after obtaining sanction from competent authority. The respondents, however, have not performed their part of contract though the appellant

was always ready and willing to perform his part of contract.

3. The trial Court noted that the appellant is claiming specific performance of contract on the basis of oral agreement to sale and receipts dated 5-4-2022. The appellant relied upon agreement to sale dated 22-7-2022 which has been not signed by the respondents. The Court then noted that there is no dispute as regards payment of Rs. 18 Lakhs by the appellant to respondents. However, the respondents have pleaded that it was given as hand-loan.

4. Considering the absence of agreement and the plea taken by the respondents, the trial Court held that merely on the basis of receipts, it may not be possible to *prima facie* hold that parties entered into agreement to sale of the suit plots and accordingly rejected the application.

5. Learned counsel for the appellant argued that despite there being clear admission in the notice issued by the respondents as regards the arrangement for selling suit plots to the appellant, the trial Court committed error in not relying upon the receipts and the draft agreement to sale placed before it.

6. I have gone through the notice dated 27-9-2022 issued by the respondents to the appellant. In paragraph no. 3, the respondents have stated that the appellant expressed his desire to purchase few plots, if respondents could obtain sanction within eight to ten months. In paragraph no. 4, the respondents have stated that they were in financial crisis and were in need of Rs. 25 Lakhs

for processing the case for sanction of lay out. At that time, appellant offered to give sum of Rs. 18 Lakhs as hand-loan to respondents with a condition that the plots identified by him will be first offered to him for sale. The respondents have then stated that the appellant failed to approach them personally either to complete the deal in respect of plots or to take back the amount of Rs. 18 Lakhs given as hand-loan. It appears from the notice that appellant has published a notice in the newspaper named 'Navbharat' indicating that he has agreed to purchase 18 plots. Accordingly, the respondents called upon the appellant to show agreement to sell executed between the parties and informed him that failure to show agreement to sale, they will forfeit the amount of Rs. 18 Lakhs as compensation for publishing defamatory notice in the newspaper.

7. As could be seen, there is no admission at the hands of respondents of execution of agreement to sale. In the circumstances, the trial Court has correctly taken a view that merely on the basis of receipts and draft agreement, *prima facie* case and balance of convenience both are in favour of the respondents. I do not find any error/illegality committed by the trial Court. There is no merit in the appeal and the same is dismissed accordingly.

(Anil L. Pansare, J.)