

Ajay

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

WRIT PETITION NO. 1510 OF 2024

Saurabhkumar S. Patel and Anr.

.. Petitioners

Versus

Baburay Pundalik Salunke and Anr.

.. Respondents

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- Mr. Kalpesh Joshi a/w. Ms. Nisha Shah, Advocates i/by Kalpesh Joshi Associates for Petitioners.
 - Ms. Swati Sawant, Advocate for Respondent No.1.
 - Mr. Ashish V. Jha, Advocate for Respondent No.2 through VC.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 02, 2025.

JUDGMENT:

1. Heard Mr. Joshi, learned Advocate for Petitioners; Ms. Sawant, learned Advocate for Respondent No.1 and Mr. Jha, learned Advocate for Respondent No.2 through VC.

2. Present Writ Petition is filed by Defendant Nos.2 and 3 in the Suit proceedings before the Trial Court taking exception to the order dated 02.12.2023. The order dated 02.12.2023 is passed in Application filed below Exhibit “53” in Suit No.4497 of 2010 before the Bombay City Civil Court at Bombay.

3. Suit is filed by Respondent No.1 – Plaintiff before the Trial Court. Parties shall be referred to as ‘Plaintiff’ and ‘Defendants’ for ease of convenience.

4. The protagonist in the present case is Defendant No.1 namely Lok Housing and Construction Limited before the Trial Court. Plaintiff – Baburay Pundlik Salunke has filed the Civil Suit for seeking specific performance of Agreement dated 25.10.2002 and declaration that the said Agreement is binding on Defendant No.1. Initially when the Suit was filed, it was filed only against Defendant No.1 since Defendant No.1 was the Developer of the property where the flat was purchased by Plaintiff vide Agreement dated 25.10.2002. It is stated in the Suit plaint that Defendant No.1 delayed in giving possession of the subject flat. Agreement dated 25.10.2002 is appended at Exhibit “C” – page No.49 of the Writ Petition. It is seen that stamp duty has been paid by Plaintiff on the said Agreement, but it is not a registered Agreement. On perusal of the Suit plaint, it is seen that substantial payments have been made by Plaintiff to Defendant No.1 which have been duly acknowledged by him by issuing receipts against the said payment.

5. Plaintiff has filed Suit for specific performance of Agreement and declaration that the said Agreement is valid and binding but in the alternative Plaintiff has also prayed for compensation and damages to the tune of Rs.86,98,556/- in the event if specific performance of the Agreement is not allowed by the Court. It is seen that subsequently the project has been completed and pursuant to the same Suit flat has been sold by Defendant No.1 to Defendant Nos.2 and 3.

6. In that view of the matter, Defendant Nos.2 and 3 were impleaded as party Defendants to the Suit before the Trial Court. There is an Agreement, rather a registered Agreement dated 01.12.2007 between Defendant No.1 and Defendant Nos.2 and 3.

7. Being aggrieved with the above, Plaintiff approached the Trial Court in the year 2010 for seeking the aforesaid reliefs. After impleadment of Defendant Nos.2 and 3, Plaintiff has also maintained a challenge to declare the registered Agreement dated 01.12.2007 between Defendant No.1 and Defendant Nos.2 and 3 as null and void and sought its cancellation. This is the structure of the Suit before the Trial Court.

8. In the above background, Defendant No.1 i.e. Lok Housing and Construction Limited and others has filed Application below Exhibit “53” seeking stay of the Suit proceedings. It is submitted by Defendant No.1 that the National Company Law Tribunal, Mumbai (for short “**NCLT**”) by order dated 03.06.2019 has admitted Defendant No.1 to the Corporate Insolvency Resolution Process (CIRP). Thus, RP has been appointed for the Company. Therefore under Section 14 of the Insolvency and Bankruptcy Code, 2016 (for short “**I and B Code**”) moratorium is applicable. Hence, Defendant No.1 prayed that the proceedings be kindly stayed until the decision of the NCLT in the pending Suit proceedings before the Tribunal. It is seen that

Defendant Nos.2 and 3 represented by Mr. Joshi before me have vehemently objected and opposed the Application before the Trial Court contending that Defendant Nos.2 and 3 have no privity of contract with the Plaintiff. Even before me, Mr. Joshi has contended that Defendant Nos.2 and 3 are bonafide purchasers for value of the Suit flat from Defendant No.1 and have no nexus with the Plaintiff. He would submit that Defendant Nos.2 and 3 are not party before the NCLT, hence he would persuade the Court to pass appropriate orders. He would submit that NCLT order dated 03.06.2019 is qua Defendant No.1 and will undoubtedly have to be adhered to. He would submit that in so far as the Suit proceedings against Defendant Nos.2 and 3 are concerned, this Court should allow the said Suit to proceed in accordance with law and accordingly modify the impugned order which stays the Suit proceedings completely. This is the sum and substance of the plea in the Writ Petition before me.

9. With the able assistance of both the learned Advocates, I have perused the impugned order which is appended at Exhibit “F” – page No.187 of the Writ Petition and the pleadings of the case.

10. Plea of the Writ Petitioners i.e. Defendant Nos.2 and 3 in the Suit proceedings is opposed by the learned Advocate for Plaintiff and Defendant No.1. In the present Writ Petition, Plaintiff has filed Affidavit-in-Reply dated 15.02.2024 whereas Defendant No.1 through

the RP has filed Affidavit-in-Reply dated 15.02.2024. RP of Defendant No.1 – Company has stated that pursuant to the NCLT order dated 03.06.2019 as per the provisions of Section 14 of the I and B Code the Suit has been stayed before the Trial Court. NCLT order is appended at running page 202 annexed to the Reply of Defendant No.1. I have perused the said order. Once the said order has been passed, the request made by the Writ Petitioners – Defendant Nos.2 and 3 before me to allow trial to proceed qua them only cannot be granted.

11. Learned Trial Court while passing the impugned order has considered the above submission which is reiterated by Mr. Joshi before me and in paragraph No.15 given adequate reasons thereto.

Paragraph No.15 of the order dated 02.12.2023 reads thus:-

“15. So far as the contention of defendants no. 2 and 3 that they are not party before the NCLT and there is no order of prohibiting the proceedings against them, hence there is no question of staying of the proceedings against defendants no. 2 and 3 are concerned, I do not found force in the contention of defendants no. 2 and 3 because it is to be seen that the order is pertinent to the properties in dispute. The plaintiff has entered into an agreement with defective no.1 pertaining to suit property and it is contended that during existence of suit agreement, the defective no.1 illegally entered into an agreement with defendants no. 2 and 3 which is under challenge. In such circumstances, the defendants no. 2 and 3 entered into shoes of the defendant no.1. They have acquired the suit properties from defendant no.1. Thus, if the suit properties are not protected then the very purpose of granting prohibition order is going to frustrated. Hence, it is also applicable to defendants no.2 and 3.”

12. From the above, it is clear that Defendant Nos.2 and 3 have entered into the shoes of Defendant No.1 by acquiring the Suit

property / flat. The Suit filed by Plaintiff is with respect to the very same Suit flat. Suit of the Plaintiff and the NCLT order, both are directed towards one and the same property namely the Suit flat which is the undisputed position. It is Plaintiff's contention that during subsistence of his Agreement, Defendant No.1 entered into a fresh Agreement with Defendant Nos.2 and 3. Hence, Plaintiff has also challenged the said Agreement of Defendant Nos.2 and 3 in the Suit proceedings.

13. In that view of the matter, I do not find any fault with the reasoning given by the learned Trial Court after considering the facts of the present case in the order dated 02.12.2023.

14. The order dated 02.12.2023 is a well reasoned order taking into account the facts of the case and the relevant provisions of law and is therefore sustained.

15. With the above observations and findings, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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by AJAY
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