



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

APPEAL AGAINST ORDER NO. 1 OF 2025

**(Shri Mahesh s/o Chandrabhan Kingrani & Anr. Vs. J.P. Realities Pvt. Ltd., through its
Managing Director & 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.V. Manohar, Senior Counsel with Mr. Harish Dangre,
Counsel for the appellants.

Mr. M.G. Bhangde, Senior Counsel with Mr. Masood Shareff,
Counsel for respondent nos. 1 to 5.

Mr. Devendra Mohgaonkar, Mr. Kapil Hirani and Ms Darshana
Bhaiya, Counsel for respondent no.6.

Mr. Yashraj Kinkhede, Counsel for respondent no.7.

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CORAM : ANIL L. PANSARE, J.
APRIL 15, 2025

Heard Mr. S.V. Manohar, learned Senior
Counsel with Mr. Harish Dangre, learned Counsel for the
appellants, Mr. M.G. Bhangde, learned Senior Counsel
with Mr. Masood Shareff, learned Counsel for respondent
nos. 1 to 5, Mr. Devendra Mohgaonkar, Mr. Kapil Hirani
and Ms Darshana Bhaiya, learned Counsel for respondent
no.6, and Mr. Yashraj Kinkhede, learned Counsel for
respondent no.7.

2] The appellants – original plaintiffs filed a
suit against the respondents – original defendants for
specific performance of contract, viz., agreement to sell
dated 3/12/2019, and also for damages for delay/failure
to execute the sale deed. Pending suit, the appellants filed
application (Exh.5) seeking temporary injunction
restraining the respondents from creating third party
interest in the suit property. The application has been

rejected by the trial Court vide order dated 7/12/2024, which is impugned in the present appeal.

3] Having heard both sides at length and having gone through the material placed before me, it appears that the trial Court has rejected the application, *inter alia*, on the ground that the appellants have suppressed certain crucial facts and, thus, have not come clean before the Court. The relevant findings find place in paragraph nos. 34 and 35 of the impugned order, which read thus :

“34] Defendants have filed the Whats app chat on record which prima-facie prove that the plaintiffs have knowledge about the ongoing construction over the suit property. From the Whats App chat on record it is prima-facie proved by the defendants that the amounts were released by the plaintiffs in favor of the defendants for raising construction over the suit property. All these facts regarding whats app communication between the parties, obtaining permission from the municipal corporation were within the knowledge of the plaintiffs but they were suppressed by the plaintiffs. The documents filed by the defendant prima-facie support the defense of the defendants that the plaintiffs have agreed to finance the project of the defendants over the suit property and the document i.e. agreement to sale dated 03/12/2019 was executed only for the purpose of security. It is also pertinent to note that if there was any intention on the part of the defendant to alienate the suit property then there was no need for them to obtain permission from the Municipal Corporation for development of the suit property. Moreover, there was no need for the defendants to obtain permission from the Tahsildar, Nagpur for excavation over the suit property. If at all there was any intention on the part of defendants to sale out the suit property then there was no need for them to pass resolution in board meeting dated 02/12/2021 authorizing Mr. Jaiprakash

Khushlani to obtain necessary permission for construction over the suit property, therefore above discussion and documents filed on record by the defendants prima-facie prove that the plaintiffs have suppressed material facts from the Court.

35] It is pertinent to note that since the construction on the suit property is carried out by obtaining prior permission of the Appropriate Authority therefore, the construction cannot be termed an illegal construction. Moreover, if the defendants are carrying out any illegal construction over the suit property then the Nagpur Municipal Corporation being Competent Authority will take appropriate action for the demolition of the illegal construction carried out if any by the defendants. It is pertinent to note that by suppressing material facts from the Court, the plaintiffs have failed to approach the Court with clean hands. It is settled position of law that grant of injunction is a discretionary relief and Court can refuse the same when the party claiming injunction does not approach the Court with clean hands. It is also pertinent to note that there is no prima-facie case in favor of the plaintiff since the construction carried out over the suit property with prior permission of the Municipal Corporation and huge amount is invested by both parties to complete the construction therefore, if the injunction as prayed is granted then irreparable loss would be caused to the defendants. There is nothing on record in order to prove that the defendants are intending to create interest in the suit property. It is also pertinent to note that the alleged agreement to sale is entered into between the parties on 03/12/2019 and even if it is termed as an agreement to sale but there is no circumstance brought to record by the plaintiffs on record to prove that during the span of three years i.e. from 03/12/2019 till filing of the suit, the defendants have attempted to create third party interest in the suit property. From the documents filed on record by defendants, it prima-facie appears that the agreement to sale dated 03/12/2019 is sham and bogus document executed only for the purpose of

security. If it all the defendants were intending to sale out the suit property, then they would not have obtained permission from the Nagpur Municipal Corporation for construction over the suit property. The formation of Whats App group and the communication therein between the plaintiffs and defendants clearly reveals that plaintiffs have knowledged about the construction being carried out over the suit property as well as the permission obtained by the defendants for construction over the suit property. Plaintiffs have not filed rejoinder in order to explain the documents filed by the defendants regarding Whats App communication and permission obtained for construction over the suit property. Therefore, from the above discussion there is no prima-facie case and balance of convenience in favor of the plaintiff and no irreparable loss would be caused to the plaintiffs hence, the plaintiffs are not entitled for grant of injunction as prayed for hence, I answer as to point No. 1 in negative and proceed to pass following order.

ORDER

- 1. Application for grant of injunction restraining the defendants from creating third party interest or changing the nature of the suit property till the disposal of the suit is rejected.*
- 2. No order as to costs."*

4] I have heard the learned Counsels on the point of suppression of facts. There appears no dispute that the parties entered into an agreement to sell dated 3/12/2019. The respondents/defendants have come up with a case that the real transaction between the parties was for finance/investment, and the aforesaid agreement was, in fact, a document executed as security. The trial Court was of *prima facie* view that the plea taken by the respondents appears to be probable because the respondents placed on record the messages exchanged between the parties through WhatsApp.

5] It appears that appellant no.1 has, sometimes on or about 3/6/2021, created a group, namely, 'Nandanwan Project'. Both, the appellants and the respondents, are Members of the group. The messages exchanged between the parties indicate that the respondents requested the appellants to release certain sum for construction work. The payments are accordingly released and details thereof have been shared by the appellants. This payment, which is reflected in WhatsApp messages, is a payment shown to have been made by the appellants to the respondents towards consideration amount as agreed in the contract of sell dated 3/12/2019.

6] Thus, the question is, whether the payment made by the appellants to the respondents is made as part payment of the agreed price of the suit property or is the payment made towards the construction work to be carried out as a joint venture. The expression 'joint venture' is used because the WhatsApp messages, so exchanged, coupled with certain documents placed on record by the respondents, indicate that the parties agreed to construct a building having saleable area of about 4 lakh square feet and to divide it 50-50.

7] The agreement to sell pertains to a property admeasuring about 74000 square feet out of land bearing block no. A-3, consisting of plot nos. 310, 311 to 317 and 318 to 367, situated at Nandanwan, Nagpur. Thus, the property under agreement to sell is situated at Nandanwan, Nagpur. The WhatsApp group is created by appellant no.1 in the name of 'Nandanwan Project'. The project is to be constructed at Nandanwan. Further,

subsequent document allegedly executed between the parties also refer to land situated at Nandanwan, having plot area of 74000 square feet approximately. Thus, the subject matter of agreement and the WhatsApp group is a land situated at Nandanwan admeasuring 74000 square feet (approximately).

8] The argument of the appellants is that there are multiple transactions between the parties, and the payment so made has no nexus with sale consideration. Mr. S.V. Manohar, learned Senior Counsel for the appellants, submits that the appellants have denied creation of WhatsApp group. He further submits that presuming that such WhatsApp group was created and payments were released, as claimed by the respondents, the appellants will still be entitled for 50% of the constructed area and, thus, pending suit, the respondents should be injuncted from creating third party interest in the suit property.

9] As against, Mr. M.G. Bhangde, learned Senior Counsel for the respondents, submits that mere denial of creation of WhatsApp group is not sufficient. The appellants, in written statement to the counter claim made by the respondents, ought to have come up with a specific plea as regards what transpired between the parties through WhatsApp messages. He submits that the appellants have not uttered a word about the photographs of construction shared in the group, the details of material procured, and requirement of payment and release thereof.

10] On this point, the trial Court found that the payments were released by the appellants for the

construction project. It also noted that obtaining permission from the Municipal Council was within the knowledge of the appellants, but was suppressed. The trial Court further noted that the documents filed by the respondents would *prima facie* support the defence that the appellants had agreed to finance the project and the agreement to sell dated 3/12/2019 was executed for the purpose of security.

11] In my view, at present, I need not comment on the reasons behind execution of agreement to sell. There are claims and counter claims, which could only be resolved through evidence. What is important is that the appellants ought to have disclosed all the facts, particularly, the facts, which have direct bearing on the subject matter of the suit. As noted earlier, the WhatsApp group created by appellant no.1 and the messages exchanged therein, which include releasing payments for the construction project, are the reasons to take a *prima facie* view that the parties agreed to join hands to construct a project at Nandanwan. The appellants appear to have agreed to finance the project and the respondents to look after the construction activities. It further appears that the parties agreed to share 50% of the constructed area.

12] This aspect of financing the project may have been agreed right at inception or could be a subsequent development, but in either case, the agreement to sell dated 3/12/2019 would come under cloud. If it was agreed right at inception, then the agreement could be said to have executed as security. If it is subsequent development, the agreement stands

modified to joint venture. The appellants should have, therefore, disclosed these facts and to explain as to why was such group created, and how are payments released thereunder. Having not done so, the appellants carry a blame of suppression of vital facts and, therefore, will be not entitled for interim relief.

13] On this point, Mr. M.G. Bhangde, learned Senior Counsel for the respondents, has invited my attention to the judgment of the Hon'ble Supreme Court in the case of *Maxim India Integrated Circuit Design Private Limited Vs. Andappa (D) By Legal Representatives And Others [(2025) 3 SCC 84]*, wherein the Court, by referring to its earlier decision, reiterated that if a litigant did not come to the Court with clean hands, he is not entitled to be heard, and such a person is not entitled to any relief from any judicial forum.

14] Mr. S.V. Manohar, learned Senior Counsel for the appellants, submits that the respondents have not disclosed true and correct status, and by applying principles of law, as noted above, the word 'litigant' would include the respondents as well and, therefore, they would be not entitled to any relief.

15] True it is that a litigant, whether plaintiff or defendant, if fails to disclose true and correct facts, will be not entitled to be heard as also will be not entitled for any relief from any judicial forum. In the present case, however, the appellants have approached the Court for a relief by filing a suit and thereafter for interim relief by filing application. They carried a blame of suppression of facts and, therefore, the trial Court has rightly recorded the finding that the appellants have not approached the

Court with clean hands and are, therefore, not entitled for any relief. The order, so passed, appears to me, to be in consonance with the material placed before the trial Court as also the law as is applicable.

16] There is, thus, no reason why should the order impugned be interfered with. The appeal is accordingly dismissed. No order as to costs.

17] At this stage, Mr. S.V. Manohar, learned Senior Counsel for the appellants, makes a request to extend the order of *status quo* granted by the trial Court for six weeks on the ground that the order continued for a substantial period.

18] Mr. M.G. Bhangde, learned Senior Counsel for the respondents, has opposed the request on the count that the appellants carry a blame of suppression of facts and, therefore, no further relief should be granted.

19] To my mind, the purpose will be served if instead of granting order of *status quo*, the respondents are directed to not create third party interest in the suit property to the extent of 50% saleable area till four weeks from today. Order accordingly.

(ANIL L. PANSARE, J.)

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