

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL
ON THE 27th OF SEPTEMBER, 2023
MISC. PETITION No. 2305 of 2023

BETWEEN:-

**DEEPAK GROVER S/O LATE GIRDHARI LAL
GROVER, AGED ABOUT 60 YEARS,
OCCUPATION: BUSINESS R/O 413 SOUTH CIVIL
LINES JABALPUR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI VIPIN YADAV - ADVOCATE)

AND

**1. ATUL AGRAWAL S/O LATE G.N.
AGRAWAL, AGED ABOUT 55 YEARS, RESIDENT
OF 707 TILAK BHUMI ANDHERDEO JABALPUR
(MADHYA PRADESH)**

**2. SUNIL AGRAWAL S/O G.N. AGRAWAL,
AGED ABOUT 62 YEARS, RESIDENT 707 TILAK
BHUMI ANDHERDEO JABALPUR (MADHYA
PRADESH)**

**3. STATE OF MADHYA PRADESH
THROUGH COLLECTOR JABALPUR
(MADHYA PRADESH)**

***(BY SHRI R.K VERMA SENIOR ADVOCATE ALONG WITH Ms. PREETI
KHANNA- ADVOCATE)***

.....RESPONDENTS

This petition coming on for admission this day, the Court passed the following:

ORDER

This misc. petition has been preferred by petitioner/defendant 1 challenging the order dated 11.03.2023 passed by 23rd District Judge, Jabalpur in MCA No. 310/2022 affirming the order dated 31.10.2022 passed by 11th Civil Judge Junior Division, Jabalpur in RCSA No.21-A/2015 whereby learned Courts below have allowed respondents 1-2/plaintiffs' application under Order 39 Rule 1 & 2 CPC dated 11.10.2022 filed in civil suit instituted on 16.02.2015 for specific performance of three agreements of sale dated 19.02.2012 notarized on 22.02.2012.

2. Facts in short are that the respondents 1-2 instituted a civil suit for specific performance of three agreements of sale dated 19.02.2012 whereby the plaintiffs entered into agreement of sale to purchase the suit property owned and possessed by the defendant 1, for total consideration of Rs.1,00,00,000/- (i.e. Rs. 17,57,992/- + 22,47,824/- + 59,94,184/-) out of which a total amount of Rs.25,00,000/- was paid in advance. It is

specifically mentioned in the agreements that the sale deed shall be executed within a period of six months and possession of the property shall be handed over at the time of execution of sale deed, meaning thereby the time of six months was essence of contract.

3. Alleging non-fulfillment of other conditions of the agreement, the plaintiffs issued registered notices dated 08.01.2015 requiring the defendant 1 to fulfill all the conditions of the agreement dated 19.02.2012 and to inform the plaintiffs within 15 days, so that the sale deed(s) may be executed in the name of plaintiffs or other persons named by the plaintiffs, which was not replied and then on 16.02.2015 civil suit was filed.

4. The defendant 1 appeared and filed written statement on 16.06.2016 admitting the agreements of sale and complaining that the time was essence of contract and the plaintiffs have failed to get executed sale deed(s) within a fixed period of six months and the suit has been filed after lapse of 2 years 11 months and 22 days i.e. just few days before expiry of three years, hence is liable to be dismissed. However, in paragraph 1 of the written statement the defendant 1 contended that he is

ready to execute the sale deed(s) as per prevailing Collector guideline, which is Rs.8362/- per sq.ft. With these submissions the defendant 1 prayed for dismissal of the suit.

5. Thereafter suit remained pending for further proceeding, regarding which no details are available before this Court, however, learned counsel for the parties informed that at present the suit is at the stage of evidence of the plaintiffs.

6. Learned counsel for the petitioner/defendant 1 submits that on the basis of agreements dated 19.02.2012 the suit was filed on 16.02.2015 and even by filing written statement the defendant 1 had shown her willingness to sell the property on the current prevailing Collector guideline, but the plaintiffs did not show their willingness to purchase and just with a view to harass the defendant 1, instant suit was filed and the plaintiffs now want to purchase the property on the price mentioned in the agreements, which is not possible.

7. Learned counsel also submits that merely because the plaintiffs have instituted the suit on the basis of admitted agreements, cannot be a valid reason to pass order of temporary injunction in favour of the

plaintiffs, that too on the application filed by the respondents 1-2/plaintiffs on 11.10.2022. He submits that in the existing facts and circumstances of the case no *prima facie* case can be said to have been established by the plaintiffs and in the existing facts and circumstances of the case, there is no balance of convenience in favour of the plaintiffs and in any case no irreparable loss would be caused to the plaintiffs in case of dismissal of the application. He further submits that learned Courts below have without taking into consideration the aforesaid aspect of the matter, as well as the legal position settled by Hon'ble Supreme Court in the case of U.N Krishnamurthy (Since deceased) through LRs vs. A.M. Krishnamurthy AIR 2022 SC 3361; Ambalal Sarabhai Enterprise Ltd. vs. KS Infraspace LLP Ltd. (2020)5 SCC 410 (para 15); and M/s. Gujarat Bottling Co. Ltd. And other vs. Coca Cola Company And others (1995) 5 SCC 545 erred in passing order of temporary injunction restraining the defendant 1 from alienating the suit property and from raising construction over it.

8. Learned counsel for the petitioner/defendant 1 further submits that the rights of the plaintiffs, if any are already saved in view of the provisions contained in Section 52 of the Transfer of Property Act.

9. In reply, learned counsel appearing for the respondents/plaintiffs submits that execution of agreements and payment of advance consideration amount of Rs. 25,00,000/- is an admitted fact and this was the defendant 1 who was liable to fulfill all the other conditions mentioned in the agreements and only thereafter the sale deed was to be executed which was not possible in absence of fulfillment of other conditions. He submits that in presence of other conditions of the agreements, time was not essence of contract. He further submits that both the Courts below have concurrently issued temporary injunction in favour of the plaintiffs, which in the limited scope of Article 227 of Constitution of India cannot be interfered. In support of his submissions he placed reliance on the decisions in the case of *Shalini Shyam Shetty and another vs. Rajendra Shankar Patil* (2010) 8 SCC 329 (para 49); *Maharwal Khewaji Trust (Regd.) Faridkot vs. Baldev Dass* (2005)(1) M.P.L.J 447 (para10); unreported decision given on 10.01.2013 in

M.A.No.3219/2012 (**Abhay Rajan Saxena vs. Ketan Mehta and others**) and prays to dismiss the misc. petition.

10. Heard learned counsel for the parties and perused the record.

11. Undisputedly all the three agreements in question were executed on 19.02.2012 (notarized on 22.02.2012) whereby total sale consideration was fixed at Rs.1,00,00,000/- out of which an amount of Rs.25,00,000/- was paid in advance and as per condition no.2 of the agreement(s), the sale deed was to be executed within six months i.e. on or before 22.08.2012. However, there are other conditions mentioned in other columns of the agreements but it appears that time of six months was fixed for fulfillment of other conditions also.

12. In the case of U.N Krishnamurthy (Since deceased) through LRs vs. A.M. Krishnamurthy **AIR 2022 SC 3361** (supra), Supreme Court has held as under:-

“**43.** In Saradamani Kandappan (supra) this Court reiterated that (i) while exercising discretion in suits for Specific Performance, the Courts should bear in mind that when the parties prescribed a time for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored; (ii) the Courts will apply greater scrutiny and strictness when considering whether purchaser was ready and willing to perform his part of the contract and (iii) every suit for Specific Performance need not be decreed merely because it is filed within the period of limitation, by ignoring time limits stipulated in the agreement. The courts will also frown upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for one or two years to file a suit and obtain Specific Performance. The three

year period is intended to assist the purchaser in special cases, as for example where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser.”

13. In the case of *Ambalal Sarabhai Enterprises Ltd.* (2020) 5 SCC 410 (supra), the Supreme Court has taken into consideration several earlier decisions as well as the decisions in the case of *M/s. Gujarat Bottling Co. Ltd.* (supra) and *Maharwal Khewaji Trust* (supra) and summarised the principles for grant of interim injunction (vide paras 15 to 23), out of which para 15 is quoted as under:-

“15. Chapter VII, Section 36 of the Specific Relief Act, 1963 (hereinafter referred to as “the Act”) provides for grant of preventive relief. Section 37 provides that temporary injunction in a suit shall be regulated by the Code of Civil Procedure. The grant of relief in a suit for specific performance is itself a discretionary remedy. A plaintiff seeking temporary injunction in a suit for specific performance will therefore have to establish a strong prima facie case on basis of undisputed facts. The conduct of the plaintiff will also be a very relevant consideration for purpose of injunction. The discretion at this stage has to be exercised judiciously and not arbitrarily.”

14. In the case of *M/s. Gujarat Bottling Co. Ltd.* (supra), Supreme Court has held as under :

“50. In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to

interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings.”

15. Even prima facie, in presence of fixed period of six months, it was for the plaintiffs to issue notice to the defendant 1 before expiry of period of six months, but for the reasons best known to them, the plaintiffs did not issue notice complaining their grievance. Copy of plaint shows that even after expiry of six months, the plaintiffs did not do anything for a period of more than two years and five months and just before few days of expiry of three years the suit was filed on 16.02.2015.

16. Thereafter on 16.06.2016 the defendant 1 filed written statement and in paragraph 1 of which itself, he stated that because the plaintiffs have failed to get executed sale deed within a period of six months, therefore, if the plaintiffs want to purchase the property, the defendant 1 is ready and willing to sell it on the prevailing/current Collector guideline, but nothing is on record to show that the plaintiffs ever made any effort to get the sale deed executed or even they did not show their

willingness to purchase the property at current/prevailing Collector guideline.

17. It is also apparent from the record that the plaintiffs in the suit filed on 16.02.2015, first time moved an application under Order 39 Rule 1 & 2 CPC on 11.10.2022 with the contentions that the defendant 1 intends to raise construction and is trying to alienate and for that purpose the brokers are coming and if the defendant 1 succeeds in doing so, the plaintiffs shall suffer irreparably and in view of the admitted agreements of sale and admitted payment of advance consideration of Rs.25,00,000/- there is *prima facie* case in favour of the plaintiffs and balance of convenience also lies in their faovur.

18. In Shalini Shyam Shetty and another (**supra**), the Supreme Court has held as under :

“**49.** On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) to (d)

(e) According to the ratio in Waryam Singh (*supra*), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) to (o) *****.”

19. Perusal of the impugned orders passed by learned Courts below shows that both the learned Courts below have, on the premise that the factum of execution of agreements in question and payment of advance consideration amount of Rs. 25,00,000/- has been admitted by the defendant 1, issued temporary injunction restraining the defendant 1 from alienating the suit property and from raising construction thereon, but nowhere learned Courts have considered the conduct of the plaintiffs which is required to be considered necessarily in the light of decisions of Supreme Court in the case of *Ambalal Sarabhai Enterprises Ltd. (supra)* and *M/s. Gujarat Bottling Co. Ltd. (supra)*, non-consideration of which has vitiated the impugned orders.

20. As a result thereof, the impugned orders (Annexure P/1 and P/6) being not sustainable are hereby set aside and the matter is remanded to

learned trial Court to decide the application under order 39 rule 1 & 2 CPC afresh in the light of principles laid down in the decision in the case of Ambalal Sarabhai Enterprises Ltd. (**supra**) without being influenced by any of the observations/findings recorded by this Court in the order passed today or in the impugned orders (Annexure P/1 and P/6).

21. Accordingly, the misc. petition is allowed and disposed off.
22. Pending application(s), if any, shall stand disposed off.

(DWARKA DHISH BANSAL)
JUDGE

SN