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VASANTI BHAT

v.

PREMLATA AGARWAL & ANR. ETC.
(Civil Appeal Nos. 8202-8205 of 2012)

B

NOVEMBER 22, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Interim Orders:

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Interim orders in suits filed by purchasers against developer – Single Judge of High Court directing not to register any agreement in respect of the flat of appellant, which was not subject matter of the suit – Notion of Motion by appellant – Interim order recalled – Appeals – Division Bench of High Court staying operation of order of Single Judge and directing the money deposited by plaintiff and appellant with developer to the credit of one of the suits and to be invested in FD – Held: Division Bench of High Court while deciding the Notice of Motion has exceeded its power and jurisdiction in commenting on the conduct of the appellant stating that she approached the court on the basis of false and fabricated documents – When the main suits are pending, particularly, the appellant is a stranger in the pending suits, such observation is not warranted and, as such, is deleted – The developer having deposited the money as directed by High Court, it safeguards the interests of plaintiff – Trial Court directed to decide the suits on merit – Administration of justice – Strictures.

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The plaintiff-respondent no. 1, on 27.1.2009, filed four suits against defendant-respondent no. 2 developer, for specific performance of agreement of sale with regard to four flats. The single Judge of the High Court by order dated 10.2.2009 appointed a Court Receiver in respect of flat No. 703, which was not shown as suit property in any

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of the suits, and flat no. 801, and directed respondent no. 2 not to execute or register agreement or create third party rights in respect of the said two flats, and by order dated 20.3.2009 directed the Court Receiver to seal the suit flats and communicate the same to the appellant. The appellant filed Notice of Motion in one of the four suits before the High Court praying for setting aside the orders dated 10.2.2009 and 20.3.2009. It was the case of the appellant that out of a total sale consideration of Rs.39 lacs for flat no. 703, she had paid Rs. 38 lacs to respondent no. 2 developer pursuant to a sale agreement and had been issued a possession letter on 30.9.3008. The single Judge by order dated 18.3.2010 set aside the orders dated 10.2.2009 and 20.3.2009 and directed the Court Receiver to return the possession of flat no. 703 to the appellant. Plaintiff-respondent no. 1 filed appeals. During the pendency of the appeals, as directed by the High Court, respondent no. 2 deposited Rs.98 lacs which had been paid by the appellant and respondent no. 1. The Division Bench ultimately allowed the appeals and set aside the order dated 18.3.2010 and directed transfer of the amount deposited by respondent no. 2, to the credit of Suit no. 251 of 2009 and to be kept invested in an FD.

Disposing of the appeals, the Court

HELD: 1.1. It is significant to note that the main suits are pending and any decision in respect of the issues raised by the parties would undoubtedly affect the ultimate stand of the parties and will have bearing on the suits. The Division Bench of the High Court while deciding the Notice of Motion has exceeded its power and jurisdiction in commenting on the conduct of the appellant stating that she approached the court on the basis of false and fabricated documents. When the main suits are pending, particularly, the appellant is a stranger in the pending suits, such observation is not warranted and is, therefore, deleted. [para 6] [1155-C-F]

A 1.2. Pursuant to the orders of the High Court, the developer has deposited a sum of Rs. 98 lakhs which safeguards the interest of respondent No.1. It is, therefore, directed:

B (i) The trial court before which the suits have been transferred from the original side of the High Court shall dispose of the suits within a period of one year.

C (ii) The deposited amount of Rs.98 lakhs invested in a Nationalized Bank be renewed periodically and disbursed subject to the orders of the court concerned.

(iii) The trial court shall decide the issue on merits on the basis of the materials to be placed before it.

D (iv) The trial court shall adhere to the time schedule and dispose of all the suits, after affording opportunity to all the parties including the appellant.

E (v) The limited protection granted by this Court on 20.04.2012 directing all the parties to maintain status quo prevailing as on that date shall be continued till final decision in the suits. [para 7-8] [1155-F-H; 1156-A-E]

F CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8202-8205 of 2012.

G From the Judgment & Order dated 29.9.2011 of the High Court of Judicature at Bombay in Appeal No. 202 of 2010 in Notice of Motion No. 3112 of 2009 in Suit No. 252 of 2009 and Appeal No. 204 of 2010 in Notice of Motion No. 3114 of 2009 in Suit No. 253 of 2009 and Appeal No. 205 of 2010 in Notice of Motion No. 3115 of 2009 in Suit No. 254 of 2009 and Appeal No. 203 in Notice of Motion No. 3113 of 2009 in Suit No. 251 of 2009.

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Ravi Shankar Prasad, Praveen Samdhani, S.K. Katriar, A
Abhay P. Sahay, Niraj Kumar, Suchita Pokharna, Himanshu
Shekhar, Anirudha Joshi, Viraj Maniar, Pramod B. Agarwala,
Prashant Mehra, Ajay Amritraj, Ashish Prakash, Prabhat
Kumar, Md. Shahid Anwar for the Appearing parties.

The Judgment of the Court was delivered by B

P. SATHASIVAM, J. 1. Leave granted.

2. These appeals are directed against the final judgments
and orders dated 29.09.2011 passed by the High Court of C
Judicature at Bombay in Appeal No. 202 of 2010 in Notice of
Motion No. 3112 of 2009 in Suit No. 252 of 2009, Appeal No.
204 of 2010 in Notice of Motion No. 3114 of 2009 in Suit No.
253 of 2009, Appeal No. 205 of 2010 in Notice of Motion No.
3115 of 2009 in Suit No. 254 of 2009 and Appeal No. 203 of D
2010 in Notice of Motion No. 3113 of 2009 in Suit No. 251 of
2009 whereby the High Court allowed the appeals filed by
respondent No.1 and set aside the order dated 18.03.2010
passed in Notices of Motions.

3. Brief facts: E

(a) An Agreement for Sale dated 06.10.2006 was entered
into between Vasanti Bhat-appellant herein and M/s Zenal
Construction Private Limited-respondent No.2 herein (the
Developers) wherein the appellant agreed to purchase Flat F
No. 703 on the 7th Floor in 'A' Wing of the Reserve Bank
of India Employees Kamdhenu Co-operative Housing
Society Limited (in short 'the Society') for a total
consideration of Rs. 39 lacs as the Developers was having
absolute right to develop and sell the flats on the said G
property pursuant to an agreement between the
Developers and the Society. Out of the total sale
consideration, a sum of Rs. 38 lacs has already been paid
through account payee cheques on different dates.
Pursuant to the above Agreement for Sale, respondent H

A No.2 issued a possession letter to the appellant on 30.09.2008.

B (b) In the meantime, on 27.01.2009, Respondent No.1-
Premlata A Agarwal and her son Ravi A. Agarwal filed four
suits being Suit Nos. 251, 252, 253 and 254 of 2009 in
the Bombay High Court against respondent No.2 for
specific performance of Agreement for Sale with regard
to four flats, namely, 801 and 802 in 'A' Wing and 801 and
802 in 'B' Wing in the said Society. In none of the suits,
Flat No. 703 in 'A' Wing was shown as the suit property.
C When the matter came up for hearing, respondent No.2-
herein (Defendant) informed the Court that they have sold
out all the said flats. But on being asked, they informed the
Court that two flats in 'A' Wing – one on the 8th Floor and
the other on the 7th Floor are yet not agreed to be sold to
D third parties under registered deed.

(c) Learned single Judge of the High Court, vide ad-interim
order dated 10.02.2009, appointed a Court Receiver in
respect of Flat Nos. 703 and 801 in 'A' Wing and directed
E respondent No.2 not to execute or register agreement,
alienate or create any third party rights in respect of the
aforesaid two flats.

(d) Learned single Judge of the High Court, vide order
dated 20.03.2009, after coming to know from the counsel
F for respondent No.1 that respondent No.2 allowed the
purchasers, namely, Vasanti Bhat and Bhavik K. Shah to
do furnishing in the suit flats and the construction work is
yet to be completed, directed the Court Receiver to seal
the suit flats and communicate the same to Vasanti Bhat
G and Bhavik K. Shah.

(e) *Being aggrieved, on 07.08.2009, Vasanti Bhat filed
Notice of Motion No. 3112 of 2009 in Suit No. 252 of
2009 before the High Court, inter alia, praying for setting
H aside the orders dated 10.02.2009 and 20.03.2009.*

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(f) Learned single Judge of the High Court, vide order dated 18.03.2010 set aside the two orders dated 10.02.2009 and 20.03.2009 and directed the Court Receiver to return the possession of Flat No. 703 in 'A' Wing to the applicant-therein i.e. Vasanti Bhat. Similar such orders were passed on the other Notice of Motions. A B

(g) Being aggrieved by and dissatisfied with the order dated 18.03.2010 passed by the single Judge of the High Court, respondent No.1 filed four appeals before the Division Bench of the Bombay High Court. C

(h) The Division Bench of the High Court, vide order dated 22.04.2010, while admitting the appeals directed respondent No.2 to deposit Rs. 98 lacs which is paid by respondent No.1 and the appellant and stayed the impugned orders in the said appeals until further orders. D

(i) Aggrieved by the order dated 22.04.2010, the appellant and respondent No.2 preferred separate special leave petitions before this Court. This Court, by order dated 23.07.2010 disposed of the aforesaid petitions and asked the parties to raise all objections before the High Court with a request to consider and dispose of the same at an early date. During the pendency of the appeals before the High Court, respondent No.2 deposited the entire sum of Rs. 98 lacs which had been paid by the appellant and respondent No.1 as directed by the High Court. E F

(j) The High Court, by impugned orders dated 29.09.2011, allowed the appeals filed by the respondents and set aside the order dated 18.03.2010 passed in Notice of Motions in the respective suits. The High Court further directed that the amount which was deposited by respondent No.2 shall be transferred to the credit of Suit No. 251 of 2009 and the amount should be kept invested in a FD in a Nationalized Bank. G H

A (k) Against the order passed by the Division Bench of the High Court, the appellant has filed this appeal by way of special leave before this Court.

B 4. Heard Mr. Ravi Shankar Prasad, learned senior counsel for the appellant, Mr. Praveen Samdhani, learned senior counsel for respondent No.1 and Mr. S.K. Katriar, learned senior counsel for respondent No.2.

C 5. All the three senior counsel appearing for the contesting parties took us through the Agreement for Sale, averments in the plaint, reliefs sought for in Notice of Motions and the order of the learned single Judge as well as the Division Bench of the High Court. Mr. Ravi Shankar Prasad, learned senior counsel by drawing our attention to the Agreement for Sale relating to Flat No. 703 in 'A' wing supported the conclusion arrived at by the learned single Judge and argued that the Division Bench committed an error in allowing the appeal of the plaintiff by rejecting the Notice of Motion filed by the appellant herein. On the other hand, Mr. Praveen Samdhani, learned senior counsel for respondent No.1, by drawing our attention to the fact that the appellant herein is a stranger in the suits, submitted that the conclusion arrived at by the Division Bench cannot be faulted with and according to him the only remedy open to the appellant is to file a separate suit to secure relief in her favour. Mr. S.K. Katriar, learned senior counsel for respondent No.2 – the Developers submitted that there cannot be any injunction against third party and the appellant herein being not a party to the suits, no injunction can be granted against her. He further submitted that by depositing a sum of Rs.98 lakhs, the interest of respondent No.1 is fully protected, hence, the impugned order of the Division Bench is not warranted and the same is liable to be interfered with.

H 6. All the learned senior counsel fairly admitted that as per Section 20(1) of the Specific Relief Act, 1963 it is only discretionary relief depending upon various factual aspects to be established by the party(s) approaching the Court. All the

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counsel have also relied on Section 14 of the Specific Relief Act, 1963 as well as various provisions of Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. It is also not in dispute that the main suits are still pending and it was also brought to our notice that because of the enhancement of jurisdiction, in October, 2012, the suits filed by the plaintiff in the original side of the High Court, with which we are concerned, are being transferred to the City Civil Court, Bombay. Taking note of the fact that the main suits are pending and any decision in respect of the issues raised by all the parties would undoubtedly affect the ultimate stand of the parties and will have bearing on the suits, we have decided not to analyse and arrive at a definite conclusion one way or the other. At the same time, Mr. Ravi Shankar Prasad, learned senior counsel for the appellant is fully justified in contending that the Division Bench while deciding the Notice of Motion has exceeded its power and jurisdiction in commenting the conduct of the appellant herein (respondent No.2 therein) stating that she approached the Court on the basis of false and fabricated documents. When the main suits are pending, particularly, the appellant before us is a stranger in the pending suits, we are of the view that such observation that respondent No.2 therein (appellant herein) had approached the Court on the basis of false and fabricated documents is not warranted and those observations have to be eschewed and we rightly do so.

7. As stated earlier, we also noted the fact that pursuant to the orders of the Court, the Developers (respondent No.2 herein) has deposited a sum of Rs. 98 lakhs which safeguards the interest of respondent No.1 herein (plaintiff in the suits).

8. We intend to dispose of these appeals by issuing the following directions:

- (i) The Court concerned, viz., City Civil Court (we were not informed about the exact Court before which the suits have been transferred from the original side of the High Court)

A is directed to dispose of the suits within a period of one year from the date of the receipt of copy of this judgment.

B (ii) The deposited amount of Rs.98 lakhs invested in a Nationalized Bank be renewed periodically and disbursed subject to the orders of the court concerned.

C (iii) All the observations/directions, particularly, the expression of the Division Bench about the alleged conduct of respondent No.2 therein (appellant herein) that she had approached the Court on the basis of false and fabricated documents, is deleted and the trial Court is directed to decide the issue on merits on the basis of the materials to be placed before it.

D (iv) The Court concerned is directed to adhere to the time schedule and dispose of all the suits, after affording opportunity to all the parties including the appellant herein, uninfluenced by any of the reasoning of the High Court and this Court.

E (v) The limited protection granted by this Court on 20.04.2012 directing all the parties to maintain status quo prevailing as on that date shall be continued till final decision being taken in the suits as directed above.

F 9. All the appeals are disposed of on the above terms. There shall be no order as to costs.

R.P.

Appeals disposed of.