

Order below Exh.5 in S.C.S.No.137/15

Shri.Chandra Padam Singh ... Plaintiff
Vs.
M/s. Suraj Enterprises & Ors. ... Defendants

This application is filed by the plaintiff for Temporary Injunction under Order 39 Rule 1 & 2 of the C.P.C. & present suit is filed for Specific Performance and Injunction against the defendants.

2 The subject of the application is that the defendant no. 1 is proprietor firm and defendant no. 2 is the proprietor of the defendant no. 1. The Defendants carrying business of building and developing the construction by the name 'Suraj Enerprises'. In the year 2009 the plaintiff inquired about the residential premises and these days defendants were launched the project by name 'Suraj Sadan- 1 & 2' situated at Plot No.11, Sector – 16, Kamothe, Navi Mumbai.

3 The plaintiff approached to the defendants, after negotiation the plaintiff had booked residential premises Flat No.503AB, 5th floor, 'Suraj Sadan-1 & 2', Plot No.11, Sector 16, Kamothe, Navi Mumbai, admeasuring carpet area 990 sq.ft. for Rs.17,82,000/-. The defendants allotted said flat to the plaintiff. Accordingly, oral agreement was entered between the plaintiff and the defendants and on the basis of the said agreement plaintiff made part payment Rs.10,32,000/- time to time by cash and cheque. Against the

payment defendants issued the payment receipt in favour of the plaintiff. The defendants started construction on the said property. The defendants have constructed 7 story twin buildings, 60% work was completed. Even though the defendant no. 2 was deliberately avoiding to execute documents and possession given to the plaintiff. The plaintiff went to visit the defendants office but defendant no. 2 was not present. The defendants neglected and avoided to give the answer. The plaintiff came to know that the defendants sold the flat to 2 to 3 persons. Then the plaintiff came to know that the defendants cheated him. The defendant is criminal habitual therefore, society members made the complaint in the concern department and also in Police Station. Thereafter the defendant no. 2 and his staff were arrested and were in jail. After some time defendant assured before the Hon'ble Session Court that he will repay the entire amount of the members. Even though thereafter the plaintiff visited in last week of January, 2015 on site then he saw construction was going on. The defendant no. 2 failed to execute the conveyance deed and also give the possession and booking amount therefore, present suit is filed. The defendant is trying to create third party interest therefore, injunction may be granted.

4 The defendant appeared through his advocate and filed say at Exh. 16. The defendant strongly apposed the application and denied the contentions. Further his contention was that suit is false, with malafide intention filed therefore, not tenable as per the provisions of law. He admitted that the defendant is builder and developer by

profession. He undertaken the project for construction of the residential complex 'Suraj Sadan-1 & 2' situate at Plot No.11, Sector 16, Kamothe, Navi Mumbai. For that defendants published the brochures for the said proposed project.

5 In the year 2009 the plaintiff booked the flat in the said project, his flat no.503AB, 5th floor in 'Suraj Sadan-1 & 2', admeasuring carpet area 990 sq.fts. for Rs.17,82,000/-. The defendants allotted the said flat to the plaintiff and issued the receipt time to time against the payment of Rs.10,23,000/-. Due to technical and financial problems defendants could not complete the construction work and handover the possession of the said flat. The defendants are not in position to complete the construction work and handover the peaceful possession.

6 Even though after negotiation the defendants agreed to repay the entire received amount of the said flat to the plaintiff. The defendants are in progress to arrange the money. The defendants undertake that they will not create any third party right in respect of said flat. Therefore, application may be rejected.

7 On considering the arguments of the both sides following points arises for my determination. I have recorded my findings against them with reasons hereinafter discussed as under :

Points

Findings

- 1 Whether the plaintiff made out prima-facie case ? ... Yes
- 2 Whether plaintiff made out balance of convenience in his favour ? ... Yes
- 3 Whether plaintiff would be suffered irreparable loss if, injunction is rejected ? ... Yes
- 4 What order ? ... As per final order

REASONS

As to point no.s 1 to 3 :-

8 Advocate for the plaintiff argued at length and advocate for the defendants also argued at length.

9 I have gone through application, say and the documents which are filed on the record by the plaintiff. The plaintiff's story is that plaintiff is builder & developers. In the year 2009 defendants are started the construction at Kamothe by name 'Suraj Sadan – 1 & 2'. The plaintiff booked Flat No. 503AB, 5th floor and it was settled that flat were sold for Rs.17,82,000/-. Against the said price the plaintiff paid Rs.10,32,000/- time to time and against the received amount issued receipt from the defendants in favour of the plaintiff. Thereafter the defendants came to handover the possession and returned amount hence, present suit is filed.

10 Hence, for that I have gone through the say of the defendants, he admitted in his say that he is builder & developers by profession. He started the construction at Kamothe by name 'Suraj Sadan- 1 & 2' situated at Plot No.11, Sector – 16, Kamothe, Navi Mumbai. The plaintiff booked Flat No.503AB, 5th floor for Rs.17,82,000/-. Against the said amount time to time he received the amount of Rs.10,32,000/- from the plaintiff. Further his contention was that due to technical and financial problem he is unable to complete the construction and given the peaceful possession.

11 From the pleading of the plaintiff and say of the defendants in my opinion defendants are admitted the facts that the plaintiff booked the flat to the defendants. Due to the some technical and financial problem he could not complete the construction and handover the possession. But defendants given undertaking in his say that he will not create any third party interest. Further he is ready to give amount to the plaintiff. In argument of the plaintiff's and defendant's advocates they admitted and submitted that the defendant is ready to give the amount to the plaintiff. But due to financial problem defendants will get some time to return the amount therefore, defendants given undertaking that he will not to create the third party interest in said flat till returned the amount to the plaintiff.

12 Considering the arguments and say of the defendants I have no hesitation to hold that the plaintiff booked flat to the

defendants and paid some amount. In support of oral evidence the plaintiff filed the documents on record. Therefore, I hold that the plaintiff is made out prima-facie case in his favour, balance of convenience is also in favour of the plaintiff. Regarding the irreparable loss the defendant admitted that he received amount from the plaintiff. Therefore, I have no hesitation to hold that if injunction is not allowed naturally the plaintiff would suffered irreparable loss. Hence, I answer these issue no.s 1 to 3 in the affirmative and I proceed to pass following order.

ORDER

- 1 Application Exh. 5 is hereby allowed.
- 2 Defendants are hereby directed that not to create third party interest in Flat No.503AB, 5th floor in 'Suraj Sadan- 1 & 2' situated at Plot No.11, Sector – 16, Kamothe, Navi Mumbai till final decision of this suit.
- 3 Cost in cause.

Panvel.
Date : 27/07/2015

(C.R.Lohar)
Jt.Civil Judge, Sr.Dvn., Panvel.