

COMMERCIAL COURT AT ASANSOL

**(FOR THE DISTRICTS OF MURSHIDABAD, BIRBHUM, PURBA BARDHAMAN,
PASCHIM BARDHAMAN, PURULIA AND BANKURA)**

Present :- Shaikh Kamal Uddin.
Judge, Commercial Court at Asansol.

JO Code :- WB01311.

Commercial Suit No. : 02/2023

CNR No. : WBB17-000006-2023

Plaintiff(s) :- Ghar Housing LLP.

V/s.

Defendant(s) :- Sri Smriti Bikash Bhattacharjee.

Order No - 02

Dated - 17/03/2023

Put up application is filed by the plaintiff. The same be registered as I.A. No. 02 of 2023. Prayer is considered and allowed.

Accordingly, I.A. No. 02 of 2023, dated 17/03/2023 is disposed of.

The plaintiff has put in the deficit court fees.

Another application under Section 12A of the Commercial Courts Act, 2015 has been filed seeking leave to institute the suit without complying with the provisions of Section 12A(1) of the Commercial Courts Act, 2015. Let the application be registered as I.A. No. 03 of 2023. It is submitted by the Ld. Advocate for the plaintiff that the instant suit has been filed for a decree of specific performance of the development agreement dated 22/10/2019 read with the Deed of declaration dated 19/03/2021 in favour of the plaintiff and against the defendant. It is also submitted that despite the plaintiff being ready and willing to carry forward the development agreement and having commenced and

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completed several preliminary activities in furtherance of the said development agreement at huge expenses, the defendant has began to threaten on and from 25/02/2023 that he will either change the nature and character of the Schedule - A property and or create third party interest and thereby frustrate the suit and accordingly the plaintiff has been compelled to take out an application under Order XXXIX Rule 1 & 2 of the C. P. Code with ad-interim effect and therefore unless the defendant is immediately restrained from alienating and / or creating in third party interest over the Schedule – A property, the plaintiff will suffer irreparable loss and injury. The Ld. Advocate therefore submitted that in view of the extreme urgency in obtaining an interim order of injunction to protect the suit property the plaintiff be allowed to institute and proceed with the instant suit without exhausting the remedy of pre-institution mediation.

I have heard the Ld. Advocate of the plaintiff and considered his submission. Considering the extreme urgency involved in the matter, the plaintiff is permitted to proceed with the instant suit without exhausting the remedy of pre-institution mediation mandated under Section 12A of the Commercial Courts Act, 2015.

Accordingly, I.A. No. 03 of 2023, dated 17/03/2023 is allowed.

Plaintiff has also filed an application under Order VI Rule 17 of the C. P. Code read with Section 151 of the C. P. Code. Let this be registered as separate I.A. being I.A. No. 05/2023, dated 17/03/2023.

Plaintiff has also filed an application under Order XXXIX Rule 1 & 2 read with Section 151 of the C. P. Code praying for an order of temporary injunction with ad-interim effect. Let this be registered as separate I.A. being I.A. No. 04/2023, dated 17/03/2023.

Record is taken up for hearing of ad-interim injunction application.

Seen the office note that there is no caveat from the defendant.

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Heard the Ld. Advocate. Perused the materials on record.

Plaintiff / applicant has moved the application under Order XXXIX Rule 1 & 2 r/w Section 151 of the Code of Civil Procedure (C. P. Code) being I.A. No. 04 of 2023, dated 17/03/2023 seeking temporary injunction with ad-interim effect in terms of the prayer made in the application.

Issue notice upon the OP / defendant to show cause within next date as to why the temporary injunction as prayed for shall not be granted.

Ld. Lawyer for the plaintiff prays for an ad-interim injunction without notice.

Considered the plaint, application for injunction and the documents enclosed with the plaint as well as the injunction application.

The suit is for specific performance of the agreement dated 22nd October, 2019 read with the Deed of declaration dated 19/03/2021.

The factual matrix of the suit in a nutshell that has led to the filing of the injunction application are narrated below in the following manner :-

- 1) The plaintiff is a leading business house carrying on business in developing real estate for over three decades.
- 2) The defendant is the sole and absolute owner of the Schedule – A land having mutated his name in the current LR record of rights.
- 3) Despite of having decided to construct a residential cum commercial complex on the said land, as the defendant did not have the requisite expertise, man power and finance to undertake such large project, he approached the plaintiff to take up the work of developing the Schedule – A land for construction of a residential cum commercial complex consisting of multistoried blocks, bungalows, cottages, commercial units and car parking spaces.
- 4) A formal agreement for development and development power of attorney was drawn up and executed by the plaintiff and the

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defendant on 22/10/2019 and the same was registered as Deed No. 08077 for the year 2019 at the office of the ADSR, Purba Bardhaman.

- 5) For rectifying certain minor errors in the said agreement a deed of declaration was drawn up and executed between the parties on 19/03/2021 and the same was also registered as Deed No. 3378 for the year 2021.
- 6) Pursuant to said development agreement and deed of declaration the plaintiff commenced various preliminary works pertaining to the aforesaid development project such as surveying, laying out, demarcating the project land, ascertaining the boundaries, ascertaining the soil conditions, obtaining permissions for the project from the concerned authority as well as obtaining permissions from the West Bengal Fire and Emergency Services Department, preparing the architectural drawing, structural drawings and plans together with building plans, installation of boring for uninterrupted water supply etc at enormous cost of the plaintiff.
- 7) As the project estimate required investment of atleast 50crores rupees, the plaintiff also initiated negotiation with several banks and financial institutions for providing the project finance and on the request of the defendant had also paid the defendant Rs.5 lakh by cheque on 16/03/2020 as an advance.
- 8) That despite such measures and activities by the plaintiff the defendant failed to deliver the original document of the title and other related documents to the plaintiff and on 25/05/2022 demanded that the plaintiff should either construct and deliver physical possession of the defendant allocation units in the development project or pay the monetary compensation to the

defendant failing which the defendant threatened to cancel and / or revoke the development agreement.

- 9) The defendant committed a number of breach of the contract and even by letter dated 07/06/2022 communicated his unilateral decisions to the bank and other authorities to terminate the development agreement and also by letter dated 21/07/2022 addressed to the ADSR, Purba Bardhaman, AGM, of SBI, PNB, Indian Bank and Union Bank, Bardhaman as well as the DM & SP, Bardhaman, the Chairman & CEO; BDA and the Chairman Bardhaman Municipality communicated his unilateral decision to cancel the development agreement and also forwarded the documents styled as '**Deed of declaration of revocation of an agreement for development and development power of attorney**' alleged to have been executed by the defendant on 24/06/2022 and registered on 25/06/2022 before the ARA 1, Kolkata being Deed No. 5897 of 2022 contrary to clause of the agreement.
- 10) Although, by letter dated 16/08/2022 the defendant requested the plaintiff to ignore the previous letter dated 07/06/2022 canceling / revoking the development agreement and resume construction of the first phase of the project and although the plaintiff communicated its readiness and willingness to commence the project work in terms of the development agreement, the defendant remained silent without any positive response to the plaintiff's request to issue fresh notice to all the banks and financial institutions as well as the other authorities calling upon them to ignore the previous letters written by him.
- 11) Withdrawal of consent to mortgage is wholly illegal and the same is in clear breach of the terms of the development agreement and

that the defendant has no right to continue the illegal acts in breach of the terms of the agreement and / or create any third party interest or encumbrances over any portion of the Schedule – A property.

- 12) The defendants have been threatening on or from 25/02/2023 to forcibly change the nature and character of the Schedule – A land and / or to alienate / encumber in order to frustrate the suit.
- 13) The Ld. Advocate for the plaintiff submitted that the plaintiff has already invested a sum of Rs.1,50,000/- for and on behalf of the defendant in pursuance of his obligation under the development agreement and he will be deprived of the benefits arising out of the said agreement valued at Rs.5,00,00,000/-.
- 14) The Ld. Advocate for the plaintiff also submitted that a *prima facie* case has been made out by the plaintiff so as to having an order of ad-interim injunction. He also submitted that the plaintiff will suffer irreparable loss and injuries and its rights shall be frustrated unless order of injunction in terms of the prayer is allowed and that this will also lead to multiplicity of proceeding.
- 15) I have heard the Ld. Advocate and I have also perused the injunction application and also gone through the documents annexed with the plaint as well as the injunction application. The plaintiff has already paid Rs.5 lakh in advance to the defendant. He has also undertaken various works pursuant to the development agreement and has also approached the financial institutions for loan with the consent of the defendant. The total expense till now incurred by the plaintiff according to the plaintiff is about Rs.1,50,00,000/-. Thus, there is no denial that the plaintiff has already invested a huge sum of money for the purpose of development of the Schedule – A property in terms of the

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agreement for development and development power of attorney dated 22/10/2019 and the deed of declaration dated 19/03/2021.

Therefore, I find a *prima facie* case in favour of the plaintiff and the balance of convenience and / or inconvenience is also in favour of the plaintiff. If injunction at this stage is not granted then the plaintiff will suffer irreparable loss and injury and the same will also give rise multiplicity of proceeding. Accordingly, I find that it is fit case for granting injunction to protect the right and interest of the plaintiff.

HENCE,

IT IS

ORDERED

That the prayer for ad-interim injunction is allowed.

The defendant is hereby restrained from transferring and / or alienating and / or disposing of the suit property as described in Schedule – A of the plaint and / or transferring its interest in said Schedule – A property in favour of any third party / third parties till the next date of hearing which is fixed on 31/03/2023.

The defendant is at liberty to seek for discharge, variation and / or modification of the order.

Plaintiff is directed to comply with the provisions as contemplated in order XXXIX Rule 3(a) & (b) of the Code of Civil Procedure.

To date for **SR of notice and show cause in respect of the application under Order XXXIX Rule 1 & 2 of the C. P. Code by the defendants.**

Let a copy of this order sheet be sent to the Ld. Advocate on record of the plaintiff / petitioner for necessary compliance.

D/C by me.

Judge, Commercial Court
Asansol

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