

MHRG040003792026



Spl. C. S. No. 59/2026

Alankar Mohan Patil
Vs
Mahadev Zipraya Bhoir

ORDER BELOW EXH. 05

01. This is the application filed by plaintiff under Order 39 Rule 1 & 2 of CPC for grant of temporary injunction restraining defendants from creating third party interest in the suit property and from changing the nature of suit property.

02. This suit is filed by plaintiff for specific performance of contract dt. 27/02/2023 and for permanent injunction. It is contended by plaintiff that defendants are owner of suit property i.e. survey no. 43/4, 43/5 and 45/7 situated at Mauje – Turbhe, Tal. Panvel, Dist. Raigad. Development agreement in respect of suit property was entered by father of defendant no. 1/1 & ½ by name deceased Zhiprya Sudam Bhoir and defendant no. 2 to 5 with M/s Lodha Developers on 08/08/2006 by executing registered agreement bearing no. 5879/2006. However Lodha Developers have not developed suit property till today and therefore defendants decided to sale the suit property again. Thereafter memorandum of understanding (MOU) was executed between plaintiff, deceased Zhiprya Sudam Bhoir and defendant no. 2, 4 and 5 on 27/02/2023 and said document was notarized and advance of Rs. 9,00,000/- was paid by plaintiff to defendant no. 2 to 5. At the time of execution of MOU, plaintiff was having knowledge about the development

agreement dt. 08/08/2006 between defendants and Lodha Developers and it was decided between plaintiff and defendants that the responsibility to get cancelled the development agreement dt. 08/08/2006 will be on defendants. Thereafter as the defendants were in financial need, plaintiff again paid Rs. 17,00,000/- to defendants on various dates. However as the defendants have not cancelled the development agreement dt. 08/08/2006 and were not ready to execute sale deed in favour of plaintiff, plaintiff issued notice to defendants calling them to execute sale deed. Plaintiff was and is ready to perform his part of contract and to pay the remaining amount but the defendants have not taken any steps to cancel the development agreement dt. 08/08/2006 and avoided to execute sale deed in favour of plaintiff. Therefore plaintiff issued notice dt. 13/06/2024 to defendants but the defendants issued false reply and denied to execute sale deed and therefore plaintiff filed this suit for specific performance of agreement dt. 27/02/2023. Plaintiff invested huge amount in the said transaction and there is possibility that the defendants may create third party interest in the suit property and therefore plaintiff prayed for issuing temporary injunction restraining defendants from creating third party interest in the suit property.

03. Defendant no.1/2 and 2 to 5 failed to appear after service of summons and therefore suit is proceeded exparty against them. Defendant no. 1/1 filed his reply at Exh. 32. Thereafter defendant no. 1/ 2 and 2 also filed their reply after setting aside no WS order against them. It is contended by defendant no. 1/1 and 1/2 that they are not party to the MOU dt. 27/02/2023 and therefore there is no

cause of action against them. Moreover all the defendants contended that deceased Zhiprya Sudam Bhoir was unable to go out side the house due to old age and ill-health. They denied that the total consideration amount was fixed at 3,25,00,000/-. They denied that MOU dt. 27/02/2023 was executed between them and plaintiff. They also denied that they received any advance amount from plaintiff in respect of alleged transaction dt. 27/02/2023. They contended that they have already filed Spl. C.S. no. 66/2012 against Lodha Developers for cancellation of development agreement dt. 08/08/2006. They contended that as the suit is already pending in court in respect of suit property, they were not intended to sale the suit property to anyone. They contended that the plaintiff himself requested them that he is ready to solve the dispute between them and Lodha Developers and requested to transfer the suit property for development in his name. They also contended that after discussion it was agreed between them and plaintiff that plaintiff shall develop the suit property within 3 years and transfer 45% of constructed area in the name of defendants as owner and keep 55% constructed area for himself as consideration. It was also agreed to pay Rs. 3,25,00,000/- to defendants in 36 months. They further contended that the plaintiff agreed to discuss with Lodha Developers and to get cancelled the development agreement dt. 08/08/2006 by paying the necessary amount to Lodha Developers. Defendants also admitted that they received some amount from plaintiff as advance but have not received Rs. 26,00,000/-. They contended that it was the duty of plaintiff to get canceled the development agreement dt. 08/08/2006 but he did not acted as per agreement. They contended that the

terms in MOU dt. 27/02/2023 are uncertain and doubtful and therefore the agreement is not enforceable. Hence, they prayed for rejection of application.

04. Following points arise for determination and I have recorded my findings against each of them along with reasons as under -

<u>POINTS</u>		<u>FINDINGS</u>
1	Whether plaintiff proves that prima facie case exists in his favour ? --	..No..
2	Whether balance of convenience lies in favour of plaintiff ? --	..No..
3	Whether plaintiff will sustain irreparable loss if injunction is not granted in his favour ? --	..No..
4	What order? --	As per final order.

REASONS

AS TO ALL POINTS :-

05. Both plaintiff and defendants are relying on their pleadings in support of their application & reply under Order 39 Rules 1 & 2 of CPC. The description of suit property is admitted to both parties. Plaintiff filed documents i.e. 7/12 extracts of suit property, copy of MOU dt. 27/02/2023, copy of payment receipts, copy of publication of notice in newspaper and the letter issued by bank about payment of cheques.

06. It is pleaded by the plaintiff himself that at the time of execution of MOU dt. 27/02/2023, he was having knowledge about the development agreement dt. 08/08/2006 between defendants and M/S Lodha Developers. It is also admitted fact that Spl. C.S. No. 66/2012 is pending in the court filed by defendants against Lodha Developers for cancellation of development agreement dt. 08/08/2006. Both parties are relying on the MOU dt. 27/02/2023. The plaintiff filed payment receipt showing payment of amount to defendants. Even the defendants admitted that they have received some amount from plaintiff. It is also admitted fact that the possession of suit property is lying with defendants.

07. Perusal of MOU dt. 27/02/2023 shows that it is executed between plaintiff, deceased Zhiprya Sudam Bhoir and defendant no. 2 to 5. It also shows that the heirs of deceased Zhiprya Sudam Bhoir i.e. defendant no. 1/1 and 1/2 have signed the MOU as witnesses. The letter issued by HDFC Bank shows that the plaintiff paid Rs. 26,25,000/- to deceased Zhiprya Sudam Bhoir and other defendants through cheques. The perusal of MOU shows that it is mentioned in paragraph A of the MOU that previously defendants executed registered development agreement bearing no.5879/2006 in favour of Lodha Developers on 08/08/2006 but the Lodha Developers have not developed the suit property till today. It is also mentioned in it that it will be the duty of plaintiff to get cancelled the said development agreement. It is also mentioned that at the time of cancellation of said development agreement, plaintiff shall pay the cancellation amount to Lodha Developers. However in the same

agreement in paragraph 6 it is mentioned that it will be the duty of defendants to get cancelled the development agreement dt. 08/08/2006. It is also mentioned their that it will be the duty of defendants to bring consent of Lodha Developers, if necessary, at the time of execution of sale transaction. Thus the MOU shows liability on both parties to get cancelled the development agreement dt. 08/08/2026. The terms of the MOU appears to be inconsistent with each other.

08. The execution of the MOU dt. 27/02/2023 depends on the cancellation of development agreement dt. 08/08/2006. However in the terms of MOU, there is ambiguity in respect of liability. The terms of MOU does not specifically shows on whom the liability to get cancelled the development agreement lies. The defendants are relying on the authority of Hon'ble Supreme Court in AIROnline 1990 SC 3, Smt. Mayawanti Vs. Smt. Kaushalya Devi. In this authority the Hon'ble Supreme Court observed in para. 18 that "the specific performance of a contract is the actual execution of the contract according to its stipulations and terms, and the courts direct the party in default to do the very thing which he contracted to do. The stipulations and terms of the contract have, therefore, to be certain and the parties must have been consensus ad idem. The burden of showing the stipulations and terms of the contract and that the minds were ad idem is, of course, on the plaintiff. If the stipulations and terms are uncertain, and the parties are not ad idem, there can be no specific performance, for there was no contract at all."

09. In the case in hand also there is ambiguity in the terms of contract and it appears that the minds of parties were not ad idem. The agreement appears to be unenforceable as the base of agreement is the cancellation of development agreement between defendants and M/s Lodha Developers, but on whom the liability to get cancelled the development agreement lies is uncertain.

10. Moreover the plaintiff had actual notice of the prior agreement between defendants and M/s Lodha Developers in respect of suit property, as such the plaintiff is not a bonafide purchaser. Considering the aforesaid facts, the prima facie case does not exist in favour of plaintiff. Moreover the possession of suit property is with defendants and the plaintiff has allegedly paid only Rs. 26,00,000/- to defendants in respect of MOU. Further the plaintiff has also prayed alternate relief of refund of advance amount paid by him to defendants along with compensation. Thus the balance of consideration lies in favour of defendants and the plaintiff will not suffer irreparable loss if injunction is not granted in his favour. In view of aforesaid facts I answer point no. 1 to 3 in negative and in answer to point no. 4, I pass following order -

ORDER

1. The application **Exh.5** is hereby rejected.

Date : 16/05/2026
Place : Panvel

(R. Y. Khandare)
5th Joint Civil Judge; Sr. Div,
Panvel.