
(2011) 05 BOM CK 0008
In the Bombay High Court
Case No : Writ Petition No.762 of 2010

Mr. Ram Kaliandas Daryanani

APPELLANT

Vs

Mandovi Realtors Private Limited

RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2011) 05 BOM CK 0008

Hon'ble Judges : A. P. Lavande, J

Bench : Single Bench

Advocate : Raunak Rao, for the Appellant;

Final Decision : Dismissed

Judgement

A. P. Lavande, J.—Heard Mr. Rao, learned Counsel for the

petitioner. By this petition under Article 227 of the Constitution of India, the petitioner challenges the judgment and order dated 14th July, 2010 passed by the Ad hoc District Judge-1, Panaji in Miscellaneous Civil Appeal (Special) No.174/2009 dismissing the appeal preferred against the order dated 17th November, 2009 passed by Civil Judge, Senior Division, Panaji in Special Civil Suit No.84/2008/B.

2. The petitioner is the plaintiff in the above suit filed against the respondent seeking specific performance of an oral agreement of sale in respect of the suit property admeasuring 14680 square metres and in the alternative refund of an amount of Rs.5 Lacs. The plaintiff filed the above suit on the ground that he had entered into an oral agreement of sale with Pascoal Trindade, the director of the respondent Company, who was authorised by all the directors of the Company to enter into an agreement of sale in respect of the suit property. According to the plaintiff, the suit property was agreed to be sold at the rate of Rs.1200/- per square metre and pursuant thereto, he had paid Rs.5 Lacs which was credited in the account of Company. The defence of the defendant was that Pascoal Trindade

and another director were authorised to enter into negotiations in the sale of the suit property, but ultimate decision was to be taken by all the directors of the Company.

3. The trial Court, upon appreciation of the materials on record, held that there was no concluded contract between the parties and consequently, dismissed the application for injunction.

4. The lower appellate Court while dismissing the appeal held that the plaintiff had made out a prima facie case, but had not proved that there was concluded contract between the parties. The lower appellate Court held that irreparable loss would not be caused to the plaintiff in the event injunction was not granted and balance of convenience was not in favour of the plaintiff.

5. Mr. Rao, learned Counsel for the petitioner submitted that both the Courts below have erred in rejecting the application for injunction filed by the petitioner/plaintiff. According to learned Counsel, there was a concluded contract between the plaintiff and the Company since Pascoal Trindade, who was the director of the Company, was authorised to enter into contract on behalf of the Company. He further submitted that since admittedly, an amount of Rs.5 Lacs has been deposited in the account of the Company, the plaintiff has prima facie proved that there was a concluded contract between the parties for the sale of the suit property. Learned Counsel, therefore, submitted that the lower appellate Court has erred in dismissing the appeal after holding that there was a prima facie case in favour of the plaintiff.

6. Having heard the learned Counsel for the petitioner and having perused the record, I find that the finding given by the trial Court, which is confirmed by the lower appellate Court that there was no concluded contract between the plaintiff and defendant, cannot be said to be perverse warranting interference in exercise of jurisdiction under Article 227 of the Constitution of India. I fail to understand as to how the lower appellate Court could hold that the plaintiff had prima facie case after holding that the plaintiff had not proved that there was concluded contract between the parties. The lower appellate Court could not have held that the plaintiff had made out prima facie case after holding that he had not proved that there was concluded contract between the parties for sale of the suit property. Since the plaintiff alleged that there was an oral contract entered into between the plaintiff and Mr. Trindade, who was authorised to enter into a contract on behalf of the Company, the plaintiff was bound to prove by cogent evidence that said Pascoal Trindade had authority to enter into transaction of sale on behalf of the Company and also that the terms of the contract, which were agreed to between the parties. It is also pertinent to note that the defendant had contended that Pascoal Trindade was only authorised to enter into negotiations of sale of the suit property and he was not authorised to enter into the contract with third party. This defence appears to be more probable and, therefore, in my considered opinion, no fault can be found with the order of the lower appellate Court by which the appeal preferred by the plaintiff against the order refusing

injunction by the trial Court, has been dismissed. In my view, no case has been made out by the petitioner for exercise of super visionary jurisdiction under Article 227 of the Constitution of India. Hence, the petition is summarily rejected.