
(2013) 10 GUJ CK 0083

In the Gujarat High Court

Case No : Appeal from Order No. 296 of 2013 and Civil Application No. 7321 of 2013 in Appeal From Order No. 296 of 2013

Sumanben Mukeshbhai Vishvashi and 1 Another APPELLANT

Vs

Dabguar Dilipkumar Maneklal and 1 Another RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0083

Hon'ble Judges : S.H. Vora, J

Bench : Single Bench

Advocate : Pramthesh D. Dave, Nos. 1-2, for the Appellant; Dipen Desai, Advocate for the Respondent Nos. 1-2, for the Respondent

Final Decision : Dismissed

Judgement

S.H. Vora, J.—With the consent of the learned advocates appearing on behalf of the respective parties, present Appeal is finally heard. Challenge in this Appeal is the order dated 17.6.2013 passed by the learned Chamber Judge, Court No. 18, City Civil Court, Ahmedabad in Civil Suit No. 261 of 2013 passed below Notice of Motion Exhibit 6/7, whereby learned trial Judge directed the plaintiffs to deposit the balance consideration of Rs. 12 Lacs within three months and further directed the defendants to execute the registered sale deed in favour of the plaintiffs within 10 days thereafter. The parties would be referred as per their status before the trial Court.

2. The appellants has prayed for following prayers in present Appeal From Order in para 5(A) and (B):

A. Be pleased to quash and set aside the order passed by the learned chamber judge, court No. 18, city civil court, bhadra, Ahmedabad. In civil suit no. 261 of 2013 dated 17th June, 2013. (order at ANNEXURE-A).

B. Further be pleased to extend the time limit of depositing amount of Rs. 12,00,000(12 Lacks) up to obtaining loan. And amount may also be reduce to

9.50 lacs which is actually to be paid to respondents.

3. So far as prayer as to reduction of balance amount of Rs. 9.50 Lacs from Rs. 12 Lacs is concerned, there is no cogent evidence on record so as to infer that the plaintiffs have made payment of Rs. 2.50 Lacs to the defendants. Under the circumstances, during the course of hearing, the Court has extended sufficient time to deposit the balance amount of Rs. 12 Lacs, however, in the interest of justice, the plaintiffs are further granted time of three months to deposit Rs. 12 Lacs with the trial Court.

4. Learned advocate for the appellants made grievance that the defendants are not cooperating in processing loan papers in terms of condition No. 8 of the sale agreement. In this connection, learned trial Judge has observed that there is no evidence placed on record so as to infer that the defendants have committed breach of condition No. 8. So this Court is not inclined to take different view of the matter with regard to the findings recorded by the learned trial Judge, more particularly, as recorded in para 7 of the impugned order.

5. In view of the findings recorded hereinabove, no case is made out to interfere with the order passed by the learned trial Judge, except to the extent time limit of three months time to deposit the amount of Rs. 12 Lacs from the date of this order. In default, the relief granted by the trial Judge in favour of the plaintiffs shall stand vacated.

6. The present appeal is filed under the provisions of Order 43 Rule 1(r) of the Code and challenge in this appeal is the discretionary order passed by the trial Court under the provisions of Order 39 Rule 1 and 2 of the Code whereby, the learned trial Judge dismissed the notice of motion Exh. 6/7 for interim relief. If this Court elaborately deal with the matter on its own merits, it is likely that same would prejudice the case of either side. Therefore, it is also well settled law that the Court is not required to go into the merits of the entire matter at this stage and what is required to be seen is whether the appellant-original plaintiff has made out a prima facie case or not for grant of interim injunction. It is well settled law that the Appellate Court may not interfere with the exercise of discretion of the Court at first instance and substitute its own discretion except when the discretion has been shown to have been exercised arbitrarily, capriciously or perversely or when the Court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. So, the Appellate Court cannot reassess the material and reach a conclusion different from the one reached by the Court. Keeping in mind the limited scope of present appeal, this Court is required to see whether discretion exercised by the learned trial Judge is perverse, arbitrary, capricious or against any settled principles of law or not? No such finding is shown so as to interfere with in the appeal. No further contentions have been raised by the learned advocate for the appellants. While parting with the order, it is clarified that this Court has examined the impugned order passed by the learned trial Judge within the limited scope of provisions of Order 43 Rule 1(r) of the Code, whereas the main controversy involved in the suit is at large

before the trial Court to be adjudicated through full-fledge trial. Therefore, the learned trial Judge shall not be influenced by any observations recorded in the impugned order and observations recorded by this Court herein above while deciding the suit at the end of trial. The findings recorded either by the trial Court or by this Court at interlocutory stage of the suit are tentative in its nature and the learned trial Judge shall decide the case on its merit and as per evidence that may be led during the course of trial and decide the suit in accordance with law.

In view of the above direction, present Appeal stands dismissed with no order as to costs.

As the Appeal is dismissed, Civil Application does not survive. Hence, Civil Application stands dismissed. Notice is discharged.