
(2014) 12 BOM CK 0067

In the Bombay High Court

Case No : Notice of Motion No. 4938 of 2007 in Suit No. 3611 of 2007

Swaran Salaria and Associates

APPELLANT

Vs

Himalayan Heli Service Pvt. Ltd.

RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21
Contract Act, 1872 — Section 10

Citation : (2015) 2 ALLMR 843 : (2015) 3 BomCR 266 : (2015) 3 MhLj 863

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : Pradeep Rajgopal, Rekha Rajgopal and Debashree Mandpe, Advocate for the Appellant; Snehal Shah, Harish Pandya, Vishal Talsania, Raj Mehta, Amish Parmar i/b. RKM Legal Services, Advocate for the Respondent

Judgement

R.D. Dhanuka, J.—By this notice of motion, the plaintiff has prayed for injunction against the defendants, their servants, agents and persons claiming through them from transferring and/or alienating and/or creating third party rights and/or any encumbrances in respect of 52 % shares in the 1st defendant company and for other reliefs. The plaintiff has filed this suit inter alia praying for specific performance of the agreement dated 22nd November, 2007. Some of the relevant facts for the purpose of deciding this notice of motion are as under :-

2. Defendant no.1 has been operating as Air Taxi Operator. Defendant no.2 holds 100% shareholding of defendant no.1. Defendant nos. 3 and 4 are the directors of the 1st and 2nd defendants each having 50% holding. The 1st defendant runs helicopter services to and from Shri Mata Vaishnovdevi Shrine. The trust of the said Shri Mata Vaishnovdevi Shrine issued a tender on 18th October, 2007 for three years commencing from 1st January 2008.

3. On 22nd November 2007 the plaintiff and the defendant no.1 entered into a writing. It is provided in the said writing that M/s.Swaran Salaria and Associates will acquire 50% stake in Himalayan Heli Services Pvt. Ltd. from World

Expeditions(I) Pvt. Ltd. for a consideration of Rs.300 lacs and will infuse further Rs.500 lacs into the defendant no.1 company by way of equity share capital of Rs.5 lacs and share premium at Rs.495 lacs. It was further provided that with the infusion of Rs. 5 lacs of additional capital by Swaran Salaria and Associates, the defendant no.2 will also bring Rs. 5 lacs as equity but at par so as to maintain parity in the shareholding pattern i.e. 50% each. It is recorded that as and by way of advance Rs. 50 lacs and Rs.25 lacs by two separate cheques were paid by the plaintiff and received by the defendant nos.2 and 1 respectively. It is further agreed by both the directors of the defendant no.2 that they would transfer additional 1% stake in defendant no.1 to the plaintiff at appropriate time for strategic reasons as mutually discussed. In clause 5 of the said writing it was recorded that irrespective of the shareholding pattern, the profit sharing between the defendant no.2 and the plaintiff shall be on 50 : 50 basis. Both parties shall have first right of refusal for stake sale (full or partial).

4. In clause 7 of the said writing it was provided that the plaintiff and the defendant no.2 will have two directors each and the board of the defendant no.1 to represent their respective interest. Plaintiff would be represented by Mr.Shamee Salaria and Mrs.Santosh Salaria. In clause 8 of the said writing it was provided that a detailed shareholders agreement shall be executed in due course. By e-mail dated 22nd November 2007 to the plaintiff the defendant no.4 referred to the advise given by the consultant that shareholding pattern should remain 50% each. It was stated that need of the plaintiff of additional 1% stake could be always be met by other means and hence question of acquiring 1% additional stake must be deleted from the agreement that was being prepared. It was also mentioned that before the plaintiff decides to go public and issue IPO, both parties have to work hard and have the company operating at a respectable and trustworthy standard. They would be competing with Dr.Vijay Malya and may be others. The defendant no.4 enquired as to what type of time frame the plaintiff was looking at for going IPO. The plaintiff was informed that a third party evaluator could be acceptable to both the partners. Defendant no.4 requested the plaintiff to delete the point no.1 from the agreement and requested that clarification with regard to point nos. 2 and 3 mentioned in the said e-mail be given by the plaintiff.

5. By e-mail dated 24th November 2007 the defendant no.4 informed the plaintiff that he will get in touch with Director General of Civil Aviation and check the status of helipad approval and find out stage of progress. It is mentioned that the defendant no.4 had asked the plaintiff if the plaintiff was prepared to put fund in the company to purchase three helicopters which the plaintiff had reconfirmed. The defendant no.4 requested the plaintiff to put that clause in the agreement that the plaintiff commits 20 crores in phased manner and the defendant no.4 visualized the disbursal of 20 crores funds in the manner mentioned therein.

6. By letter dated 26th November, 2007 to the defendant no.4, the plaintiff

referred to the e-mails dated 22nd November 2007 and 24th November 2007 and conveyed that the plaintiff stands by and honours the agreement signed by them on 22nd November 2007 and no new changes at that stage needed to be discussed. Plaintiff informed that if any matter needed to be discussed, the same would be put up in the board meeting like expansion of the company, bringing new aircrafts as per the needs and the same would be taken care by the company. The plaintiff stated that in so far as funds were required, plaintiff would ensure that the company would arrange and raise the funds as required to acquire a fleet of new aircrafts, helicopters. The plaintiff informed that regarding clauses 1, 2 and 3, the points were clear and there was no need to explain any more in details. It is mentioned that all other points as mentioned in the e-mail (additional 1% stake) of the defendant no.4 needs to be discussed in the board meeting and requested the defendant no.4 to enquire as to when such board meeting could take place. The plaintiff informed that the remaining money to be paid to the defendant no.4 shall be paid no sooner a meeting was fixed by the defendant no.4.

7. On 27th November 2007 the defendant no.1 informed the plaintiff who was then executive director of Simm Samm Airways Private Limited informing that the defendant no.1 could not go ahead with the agreement they had on 22nd November 2007 and therefore was returning the cheques in original in the sum of Rs.50 lacs and Rs.25 lacs which were issued in favour of the defendant no.2 and defendant no.1 respectively.

8. By letter dated 28th November 2007 to the defendant no.4 the plaintiff referred to the agreement dated 22nd November 2007 and contended that as per the said agreement, the parties were supposed to execute the final shareholders agreement and complete the payment formalities and requested the defendant no.4 to confirm by when the said agreement would be ready so that the same could be executed at the earliest. On 10th December 2007 the plaintiff filed the suit. The defendants have opposed the reliefs claimed in the notice of motion by filing affidavit in reply.

9. Mr.Rajgopal, learned counsel for the plaintiff invited my attention to various averments made in the plaint, correspondence exchanged between the parties, agreement dated 22nd November 2007 and also the stand taken by the defendants in the affidavit in reply. It is submitted that the agreement dated 22nd November 2007 is a binding contract under section 10 of the Indian Contract Act, 1872. The plaintiff has already made payment to the defendant nos. 1 and 2 in the sum of Rs.75 lacs which is deliberately returned by the defendants. It is submitted that the said agreement dated 22nd November 2007 did not provide for a formal agreement to be entered into as an express pre-requisite condition. It only states that the said agreement was based on the detailed discussion and negotiations and a shareholders agreement would be entered into in due course.

10. It is submitted that the base valuation of assets in the company is also

detailed. The terms of the acquisition are also recorded clearly in clauses 1 to 7. The said agreement is signed by the directors of the defendant no.2 and defendant no.1 and both the defendants were represented by their respective promoters and directors. The said agreement was also witnessed by two witnesses. It is submitted by the learned counsel that the said agreement dated 22nd November 2007 clearly satisfies all the requirements under section 10 of the Indian Contract Act, 1872 and the same is a contract enforceable in law. It is submitted that the defendants have not denied the execution of the said writing and the same is thus binding on the parties.

11. Learned counsel submits that the words "broad understanding" used in the agreement does not contemplate the requirement of subsequent formal agreement. The shareholders agreement mentioned in the said agreement dated 22nd November 2007 is only a mere expression of desire as to the manner in which the transaction already agreed upon is to go through. It is submitted that the said agreement dated 22nd November 2007 does not provide and/or contemplate execution of any subsequent formal agreement without which the said agreement dated 22nd November 2007 would not constitute a binding and enforceable contract. Learned counsel submits that in absence of such clause contemplating subsequent formal agreement, the existing agreement itself would constitute a binding contract enforceable under the provisions of Specific Relief Act, 1963.

12. Learned counsel submits that there was no dispute with regard to the transfer of 50% of the shareholding but the dispute was initially only in respect of additional 2%. It is submitted that the defendant no.2 also in their e-mail dated 22nd November 2007 had referred to the agreement and thus they cannot be permitted to raise a plea that there was no binding agreement in place. It is submitted that the said agreement dated 22nd November 2007 is not an incomplete document and no further document was to be drawn up between the parties.

13. It is submitted that even the letter dated 22nd November 2007 clearly demonstrates that the agreement had been signed by the parties and that apart from the issue with regard to 2% stake in addition to the 50% stake in defendant no.1, the terms of the agreement dated 22nd November 2007 were unobjectionable.

14. Learned counsel submits that the issue raised by the defendants in the affidavit in reply that the agreement was in violation of the procedure prescribed in Articles 7 to 9 of the Articles of Association is an afterthought and the said issue has never been raised in any of the correspondence exchanged between the parties. It is submitted that the issue regarding prior approval from the Ministry of Civil Aviation is also an afterthought and cannot be a ground for refusal of interim reliefs.

15. Learned counsel submits that M/s.Simm Samm Airways Private Limited is an

associate concern of the plaintiff and any arrangement/interference with the plaintiff by the defendant no.1 shall be detrimental to the interest to the company. It is submitted that whether the said M/s.Simm Samm Airways Private Limited is an associate concern of the plaintiff or not is irrelevant for the purpose of deciding this notice of motion. The defendants were all throughout aware and had knowledge of the position of the said M/s.Simm Samm Airways Private Limited. It is submitted that the termination of the said agreement by the defendants is totally illegal and the plaintiff is thus entitled to interim relief as prayed.

16. In support of the aforesaid submissions, learned counsel for the plaintiff placed reliance on the following judgments :-

(a) Judgment of Supreme Court in case of Kollipara Sriramulu Vs. T. Aswathanarayana and Others,

(b) Judgment of Madras High Court in case of H.G. Krishna Reddy and Co. Vs. M.M. Thimmaiah and Another,

(c) Judgment of Supreme Court in case of M/s. Rickmers Verwaltung GMB H Vs. The Indian Oil Corporation Ltd., .

(d) Judgment of Delhi High Court in case of Sobhag Narain Mathur Vs. Pragya Agrawal and Others, .

(e) Judgment of this court in case of Makers Development Services Pvt. Ltd. Vs. M. Visvesvaraya Industrial Research and Development Centre, .

(f) Judgment of this court in case of Brooke Bond India Ltd. Vs. U.B. Ltd. and others, .

17. Mr.Shah, learned counsel for the defendants in reply invited my attention to various averments made in the plaint and also to the correspondence exchanged between the parties and submits that the agreement dated 22nd November 2007 was not a concluded agreement but at most can be construed as an agreement to enter into an agreement and no specific performance in respect of such a writing can be granted by this court. It is submitted that in any event the said agreement is not an enforceable contract. Several material terms and conditions were to be discussed. In any event the plaintiff was not ready and willing to perform its part of obligation. It is submitted that in a suit for specific performance of an agreement, plaintiff has not only to plead but has to prove their continuous readiness and willingness all throughout. It is submitted by the learned counsel that the plaintiff has neither averred nor has prima facie proved their continuous readiness and willingness to perform their part of the obligation.

18. Learned counsel submits that prior permission of Director General of Civil Aviation was mandatory before entering into any agreement of this nature which was admittedly not obtained. This court cannot grant any specific performance of the alleged agreement even on that ground.

19. Learned counsel for the defendants invited my attention to the writing dated 22nd November 2007 and submits that even the said writing also ex facie indicates that only the broad terms of the agreement for acquisition of stake in the defendant no.1 company were recorded. The plaintiff had agreed to infuse further amount in the company. No time has been prescribed under the said writing for infusion of further amount by the plaintiff or by the defendants. The plaintiff had only tendered the advance amount under the said writing. Time for payment of the balance consideration has not been prescribed in the said writing. In clause 4 of the said agreement there was no time prescribed within which the directors of the defendant no.2 would transfer additional 1% stake in the defendant no.1 company to the plaintiff. Details of the mutual discussion held as recorded in clause 4, has not been mentioned. When the right of pre-emption could be exercised by either party is not provided in the agreement. Learned counsel submits that the negotiation on material terms was to be done in future and such material terms were to be incorporated in the final agreement if the same was executed.

20. Learned counsel submits that the copy of the said writing provided to the defendants does not contain signature of both the witnesses but only of one witness. There is a reference to the agreement being prepared in the e-mail dated 22nd November 2007 from the defendant no.4 to the plaintiff which itself indicates that the agreement dated 22nd November 2007 was not concluded agreement. Issue of additional 1% shareholding was to be discussed in the board meeting. Time frame for issuance of IPO was not agreed. Defendant no.4 has asked for various clarification in the said e-mail dated 22nd November 2007 from the plaintiff which the plaintiff refused to give.

21. Learned counsel invited my attention to the reply of the plaintiff dated 26th November 2007 to the defendant no.4 and would submit that the plaintiff did not deny in the said letter that the further discussion was required in the board meeting. Admittedly no time was fixed for payment. It is submitted that the defendants never encashed the cheques of Rs.75 lacs and had returned the same. The plaintiff not only accepted those cheques but did not offer the balance amount nor made any application to deposit the balance amount even in court to show their bona fides and readiness and willingness.

22. My attention is invited to the e-mail of the plaintiff to defendant no. 4 after termination of the agreement dated 22nd November, 2007 which also records that the parties were supposed to execute the final shareholders agreement and complete the payment formalities.

23. Mr. Shah learned counsel for the defendant then submits that the plaintiff had suppressed that M/s. Simm Samm Airways Private Limited was an associate concern of the plaintiff and was a competitor of the defendant nos. 1 and 2. My attention is invited to visiting card of the plaintiff to show that he was executive director of the said M/s. Simm Samm Airways Private Limited. It is submitted by the learned counsel that in paragraph 7 of the plaint the plaintiff has falsely

alleged that in pursuant of the negotiation taken place for the agreement dated 22nd November, 2007 the plaintiff had purchased and imported two helicopters from the United Kingdom at the cost of approximately Rs.22 Crores which were to be added to the fleet of four helicopters already owned by defendant nos. 1 and 2.

24. Learned counsel invited my attention to the document annexed to the rejoinder in support of the submission that the permission to purchase new helicopters was applied by M/s. Simm Samm Airways Private Limited and was granted by the authority as far back as on 1st November, 2006 i.e. much prior to the execution of the agreement. In the rejoinder filed by the plaintiff the plaintiff has falsely denied that M/s. Simm Samm Airways Private Limited was not an associate company of the plaintiff. It is submitted by the learned counsel that since the plaintiff has not come to the court with clean hands, this court shall not exercise the discretionary power in favour of the plaintiff. Mr. Shah learned counsel for the defendants distinguished the judgments relied upon by the learned counsel for the plaintiff and relied upon the judgments of the Supreme Court in case of *Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy and others*, in support of submission that the party who seeks that the court should exercise discretionary power in a suit for specific performance must come with clean hands.

25. Mr. Shah learned counsel also placed reliance on the judgment of Supreme Court in case of *Dresser Rand S.A. Vs. BINDAL Agro Chem Ltd. and K.G. Khosla Compressors Ltd.*, and in particular paragraphs 32 and 39 in support of the submission that the agreement dated 22nd November, 2007 was not a concluded contract.

26. Mr. Rajgopal in rejoinder submits that the plaintiff runs the firm namely Trig Detective. In so far as M/s. Simm Samm Airways Private Limited is concerned, the same is the concern of the wife of Mr. Swaran Salaria and his son Mr. Shamee Salaria. It is submitted that in any event the said issue is irrelevant for the purpose of deciding this notice of motion. It is submitted that the said M/s. Simm Samm Airways Private Limited has imported two helicopters in the month of January- February, 2007 pursuant to the permission granted by the Director General of Civil Aviation. It is submitted by the learned counsel that the shareholder agreement which was to be entered into between the parties was only for the purpose of expressing intension and desire of the parties found in the agreement dated 22nd November, 2007 and was not a condition precedent to arrive at a concluded agreement. It is submitted that the plaintiff has also satisfied the provisions of Order 21 of the Code of Civil Procedure, 1908. In so far as issue of the prior permission of Director General of Civil Aviation whether required or not is concerned, it is submitted by the learned counsel that permissions were implied under clauses 7 and 9 of the Articles of Association and ordinary resolution was sufficient to consolidate and divide the share capital which is deemed to have been resolved. It is submitted that this court has

already granted ad-interim injunction in terms of prayer clause (a) having been satisfied prima facie that the plaintiff may succeed in the suit for specific performance. It is submitted that the plaintiff has not only pleaded about their readiness and willingness to perform their part of obligation but would have deposited the amount in this court in order to meet the end of justice. It is submitted that if the interim reliefs as claimed are not granted, the entire suit would become infructuous.

27. A perusal of the writing dated 22nd November 2007 prima facie indicates that the parties have recorded the broad terms of agreement for acquisition of stake in Himalayan Heli Services Pvt. Ltd. Though clause (1) of the said writing provides that Mr.Swaran Salaria and Associates will acquire 50% stake in the said company i.e. H.H.S.P.L. from World Expeditions(I) Pvt. Ltd. for a consideration of Rs.300 lacs and will infuse further Rs.500 lacs into the said company by way of equity share capital, time for complying with the said obligation on the part of the plaintiff has not specified in the said writing.

28. In paragraph 2 of the said writing, time for the company M/s.World Expeditions (I) Pvt. Ltd. to bring in Rs. 5 lacs as equity so as to maintain parity in the shareholding pattern i.e. 50% each is not specified. In paragraph 4 of the said writing though it is provided that both the directors of the World Expeditions (I) Pvt. Ltd. would transfer additional 1% stake each in HHSPL to the plaintiff at appropriate time for strategic reasons as mutually discussed, neither the time is fixed for transfer of such additional 1% stake nor the discussion arrived at between the parties is recorded.

29. A perusal of clause (6) of the writing indicates that the time for exercising the right of pre-emption to be exercised by either party is not provided in the said writing. Clause (8) provides that a detailed shareholder agreement shall be executed in due course. Time for execution of such detailed shareholder agreement is not provided.

30. A perusal of e-mail dated 23rd November 2007 from the defendant no.4 to the plaintiff indicates that the plaintiff was to decide to go public and issue IPO. The parties had not agreed as to what kind of time frame the plaintiff was looking at for going IPO. The defendant no.4 had requested the plaintiff to delete provision for additional 1% stake from the agreement and sought clarification on the other two points raised in the said e-mail. A further perusal of the correspondence entered into between the parties indicates that the parties were still discussing the terms of the agreement proposed to be entered into after the said writing dated 22nd November 2007. A perusal of letter dated 28th November 2007 from the plaintiff to the defendant no.4 makes it clear that even according to the plaintiff the parties were supposed to execute the final shareholders agreement and to complete the payment formalities.

31. Issue of additional 1% shareholding was to be discussed in the board meeting which did not take place. The defendant no.4 had asked for various

clarification in the e-mail dated 22nd November 2007 from the plaintiff which the plaintiff refused to give. In my view these are some of the material terms and conditions of the contract which were not decided between the parties and were not incorporated in the said writing dated 22nd November 2007. In my prima facie view the said writing dated 22nd November 2007 thus can at the most be considered as an agreement to enter into an agreement in future which would have been executed after conclusion of the negotiations, finalization of all the terms and conditions etc. In my prima facie view such agreement to enter into an agreement cannot be specifically performed.

32. A perusal of the record also indicates that prior permission of the Director General of Civil Aviation was mandatory which were admittedly not obtained. I am not inclined to accept the submission of the learned counsel for the plaintiff that such permission was implied under clauses 7 and 9 of Articles of Association or that the said plea raised by the defendants is by way of an afterthought and not relevant for the purpose of deciding this notice of motion.

33. Supreme court in case of Kollipara Sriramulu vs. T.Aswatha Narayana (supra) has held that a mere reference to a future formal contract will not prevent a binding bargain between the parties. There are however cases where the reference to a future contract is made in such terms as to show that the parties did not intend to be bound until a formal contract was signed. There may be a case where a signing of a further formal agreement is made a condition or term of the bargain and if the formal agreement is not approved and signed there is no concluded contract.

34. In my prima facie view since the said writing dated 22nd November 2007 was the document recording broad terms of the agreement providing for execution of a detailed shareholders agreement after deciding various issues which were to be discussed, the said writing cannot be considered as a concluded agreement. In my prima facie view the parties did not intend to be bound by writing dated 22nd November, 2007 until final and concluded agreement was executed after finalisation all the material terms and recording the same in such concluded agreement. I am respectfully bound by the judgment of the Supreme Court in case of Kollipara Sriramulu vs. T.Aswatha Narayana (supra).

35. Similar view has been taken by the Madras High Court H.G.Krishna Reddy and Co. vs. M.M.Thimmiah and another (supra). There is no dispute about the proposition laid down by the Madras High Court in the said judgment. Supreme court in case of Rickmers Verwaltung GMBH (supra) has held that there is a vast difference between negotiating a bargain and entering into a binding contract. A perusal of the record prima facie indicates that the parties to the suit were negotiating a bargain and had not arrived at any concluding and binding contract.

36. This court in case of Makers Development Services Pvt.Ltd. (supra) has held that if all the essential terms and conditions of the bargain had not been agreed upon between the parties, it was impossible to imagine that the defendants

having not only admitted in every document and letter that there was a concluded contract but proceeding with the execution thereof to such a large extent which would irretrievably affect the rights of the parties. I am not inclined to accept the submission of the learned counsel for the plaintiff that all the terms and conditions were already arrived at between the parties and were recorded in the said writing dated 22nd November 2007 and the parties were only required to execute a formal agreement which was not and without execution of such document, writing dated 22nd November 2007 would not be a final, binding and concluded contract.

37. A perusal of the record also prima facie indicates that the plaintiff did not disclose to the defendants that the plaintiff was the executive director of M/s. Simm Samm Airways Private Limited who was a competitor of the company M/s. World Expeditions(I) Pvt. Ltd. and has not come to this court with clean hands. The plaintiff denied these allegations in the rejoinder. The learned counsel for the plaintiff across the bar at the time of arguments admitted that the said M/s. Simm Samm Airways Private Limited was the company run by wife and son of Mr. Swaran Salaria. I am not inclined to accept that the said issue raised by the defendants is not relevant at this stage for the purpose of deciding this notice of motion.

38. A perusal of the record also prima facie indicates that the plaintiff has made an incorrect statement in the plaint that the plaintiff had purchased two imported helicopters from the United Kingdom pursuant to the negotiations taken place between the parties for the agreement dated 22nd November 2007 which were to be added to the fleet of four helicopters already owned by defendant nos. 1 and 2. A perusal of record indicates that M/s. Simm Samm Airways Private Limited had applied for permission of the authority for purchase of two helicopters as far back as on 1st November 2006 which permission was granted by the authority much prior to the execution of the writing dated 22nd November 2007. The purchase of the said two helicopters by the associate concern of the plaintiff pursuant to the negotiations for the agreement dated 22nd November 2007 thus could not have taken place.

39. I am not inclined to accept the submission of the learned counsel for the plaintiff that the helicopters purchased in the month of January-February 2007 by the associate concern of the plaintiff pursuant to the permission granted by the Directorate General of Civil Aviation would be of no relevance for the purpose of deciding this notice of motion. In my view Mr. Shah learned counsel for the defendants is right in his submission that the plaintiff not having come to this court with clean hand is not entitled to any discretionary relief from this court.

40. A perusal of the record also indicates that the plaintiff accepted the amount returned by the defendants and did not make any offer to pay the entire consideration amount to the defendants or to deposit the same in this court to show their readiness and willingness to perform their part of obligation. Neither any such averment is made in the plaint nor the plaintiff has shown their

readiness and willingness to perform their part of obligation. In a suit for specific performance of an agreement, the plaintiff has not only to plead but has to prove their continuous readiness and willingness althroughout i.e. from the date of agreement till the decree is passed by the court which the plaintiff has failed in my prima facie view.

41. I am of the prima facie view that since the prior permission of the authority was required to be obtained which is not obtained, in my prima facie view the plaintiff would not be able to succeed in this suit for specific performance of such writing on that ground also.

42. In my prima facie view the material terms and conditions of the contract are not concluded and recorded between the parties and thus this court may not be able to grant any prayer for specific performance in the facts of this case. The court cannot supervise the performance of the contract. Interim relief is in aid of final relief. I am therefore of the view that since plaintiff has not made out a prima facie case that plaintiff would be able to succeed in a suit for specific performance, no interim relief thus can be granted in favour of the plaintiff in such suit for specific performance.

43. I am therefore of the view that the notice of motion is devoid of any merits and is accordingly dismissed. No order as to costs.