Samir Narain Bhojwani vs M/S Aurora Properties And Investments on 21 August, 2018

Equivalent citations: AIRONLINE 2018 SC 1218, AIRONLINE 2018 SC 782

Author: A.M. Khanwilkar

Bench: D.Y. Chandrachud, A.M. Khanwilkar, Dipak Misra

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7079 OF 2018
(Arising out of SLP (Civil) No.18465/2018)

Samir Narain Bhojwani ….Appellant(s)

:Versus:

M/s. Aurora Properties and Investments
and Anr. ....Respondent(s)

JUDGMENT

A.M. Khanwilkar, J.

1. The captioned appeal challenges the judgment and order passed by the Division Bench of the Bombay High Court dated 9th July, 2018 in Commercial Appeal No.173 of 2017, whereby the Division Bench dismissed the appeal filed by the appellant and upheld the decision of the learned Single Judge dated 9th learned Single Judge inter alia passed a mandatory interlocutory injunction directing the appellant to hand over 8 (eight) flats along with 16 (sixteen) car parking spaces under the Settlement Agreement dated 4th November, 2016 and Consent Terms dated 25th September, 2017 between respondent Nos.1 and 2 inter partes.

2. The relevant facts are as follows: Respondent No.1/plaintiff was appointed by one Andheri Kamgar Nagar Cooperative Housing Society Ltd. (for short, „the Society') under a Development Agreement dated 6th October, 1996 as a developer under the Slum Development/ Rehabilitation Scheme to develop the suit property in question, being a plot of land situated at Versova Link Road,

Taluka Andheri and bearing Survey No. 139, City Survey No. 1319 (Part) admeasuring 8892 sq. mts. or thereabouts as per Indenture of Lease dated 31st March, 1993 and 9402 sq. mts. as per City Survey Records. One part of the suit property was for constructing tenements free of charge for project-affected persons and the balance property could be used to develop and sell the balance FSI. Respondent No.1 then executed an Agreement for Sub-Development dated 22nd September, 1999 with respondent No.2/defendant No.1, transferring the benefits of development rights in the suit property, with the consent of the aforementioned Society, to respondent No.2 after keeping aside 15,000 sq. ft. for itself i.e. respondent No.1.

3. Subsequently, respondent No.2 executed an Agreement for Development dated 10th March, 2003 with the appellant/defendant No.2, whereunder the appellant would be entitled to 55% of the total area available for free sale buildings and car parking in the suit property and respondent No.2 retained 45% of the total area available for construction of free sale buildings and car parking by utilizing FSI which may be available on the suit property as per the Slum Rehabilitation Scheme. This agreement was entered into without the consent of respondent No.1 and hence, all three parties executed a Tripartite Agreement dated 11th September, 2009, referencing the previous agreements of 6th October, 1996 and 22nd September, 1999 wherein respondent No.1 was entitled to an area of 22,500 sq. ft., an increase from its earlier agreed upon 15,000 sq. ft., which would be allocated out of

4. Disputes arose during the construction of the building, which resulted in respondent No.1 filing a Commercial Suit No. 62 of 2013 against respondent No.2 and the appellant inter alia seeking specific performance of the Development Agreement dated 22nd September, 1999, read with the Tripartite Agreement dated 11th September, 2009, including handing over constructed area of 22,500 sq. ft. in the free sale buildings along with proportionate car parking space, in the form of 12 (twelve) flats in Wings „A and „B of the building „Bay – View constructed on the suit property and 24 (twenty four) car parking spaces. Respondent No.1 also took out Notice of Motion No. 147 of 2013 for interim reliefs, seeking to restrain respondent No.2 and the appellant from creating third party rights in the suit property without first handing over possession of the 22,500 sq. ft. constructed area in the form of flats and parking spaces. Respondent No. 1 alleged that this interim relief was necessitated by the fact that its advocate had conducted a search in the sub-registrar s office and found a mortgage deed executed by the appellant in favour of a third party with respect to 12 flats and 24 parking spaces in the building „Bay–View and that it apprehended that the appellant would sell or create third party rights in respect of the said flats. The alleged mortgage deed itself was not produced by respondent No.1 on the ground that it had applied for a copy of the same but was yet to receive it. Respondent No.1 also sought to appoint a Court Receiver to take charge of the premises in the suit property comprising its 22,500 sq. ft. constructed area. An ad-interim, consent order was passed on 3rd December, 2012, in the said Notice of Motion No. 147 of 2013, whereby respondent No. 2 and the appellant agreed to not dispose of or create third party rights in respect of 8 flats in the completed Wings „A and „B of the building and 4 flats in the under-construction Wing „C of the building, totaling 12 flats.

5. The parties filed their respective replies and rejoinders in the suit and notice of motion. The appellant s stance was that he had completed his contractual obligations and offered respondent

No.2 its entitlement of 45% area in the constructed buildings but respondent No.2 had failed to take possession of the same. The subsequent delay in construction of Wing „C of the building was due to the failure of respondent No.2 to obtain a Commencement Certificate for Wing „C , resulting in losses to the appellant. Owing to this breach committed by respondent No.2, it was no longer entitled to its 45% share in the constructed area and as a consequence, respondent No.1 was not entitled to its 22,500 sq. ft. area which could only be claimed out of the respondent No.2 s entitlement.

6. The appellant then took out Notice of Motion No. 540 of 2013, seeking to refer the suit to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 ("the Arbitration Act") and Arbitration Application No. 86 of 2013, seeking to appoint an arbitrator under Section 11 of the Arbitration Act. Both these proceedings were rejected by the High Court vide its order dated 30th September, 2014 on the ground that while the Development Agreement of 22nd September, 1999 between respondent Nos.1 and 2 contained an arbitration clause and similarly, the Agreement of 10th March, 2003 between the appellant and respondent No.2 also contained an arbitration clause, however, the Tripartite Agreement of 11th September, 2009 itself did not contain an arbitration clause and that a mere reference made in the Tripartite Agreement to the previous agreements would not make the arbitration clauses therein part of the Tripartite Agreement. The appellant challenged that decision right upto this Court in SLP (Civil) No. 2235 of 2015, which stood rejected.

7. The appellant also initiated proceedings under Section 9 of the Arbitration Act against respondent Nos.1 and 2 before the High Court. The High Court refused to grant any relief in the petition filed under Section 9 of the Arbitration Act. The appellant then withdrew the Section 9 proceedings and initiated arbitration solely against respondent No. 2 under the Agreement dated 10th March, 2003. In the said arbitration proceedings, respondent No.2 filed an application for interim reliefs under Section 17 of the Arbitration Act inter alia seeking specific performance of the agreement of 10th March, 2003 including possession of its entire 45% share of flats in the buildings constructed on the suit property. Respondent No.2 contended that the application was necessitated by the fact that the appellant had violated the terms of the 10th March, 2003 Agreement and had created third-party rights in respect of his 55% entitlement in the suit property, without first providing respondent No.2 with the occupation and possession of its 45% entitlement in the suit property as set out in the said Agreement. Respondent No.2 also submitted that the appellant had deposited a refundable amount of Rs.4 crore as part of his obligation under the Agreement but that refund of the said deposit was not, in any way, connected with handing over of the respondent No.2 s entitlement of flats. In any event, respondent No.2 had offered to refund the said deposit in exchange for possession of the flats due to it, which the appellant had refused.

8. By an interim order dated 12th October, 2016, the sole arbitrator made prima facie observations that construction of Wing „C in the building situated on the suit property had been delayed owing to respondent No.2 s failure to obtain the Commencement Certificate for the same. Further, respondent No.2 had allowed the appellant to construct only 88 flats so far, which worked out to 72% of the total area to be constructed. On that basis, the arbitrator was of the opinion that respondent No.2 could not receive its entire 45% share in the constructed area of 88 flats, which worked out to 31.6 flats, but instead, would receive 72% of its 45% share which worked out to 28.5

flats. From these 28.5 flats, 12 flats were to be kept aside for respondent No.1 as directed in the High Court s ad-interim order dated 3rd December, 2012 and thus, respondent No.2 was entitled to 16.5 flats. Out of 16.5 flats, the appellant was directed to hand over possession of 16 flats to respondent No. 2, after which respondent No.2 would refund the deposit given by the appellant in respect of such flats. The remaining amount of respondent No.2 s entitlement in one flat would be discharged by both respondent No.2 and the appellant jointly disposing of the said flat at a mutually agreed price.

9. This order was challenged by the appellant, first before the High Court and having failed there, before this Court in SLP (Civil) No. 35563 of 2016. This Court, vide order dated 14th December, 2016, refused to set aside the High Court s decision but recorded that the observations made by the sole arbitrator and High Court would not influence the final outcome of the matter.

10. Reverting to Notice of Motion No.147 of 2013 in the suit filed by respondent No.1, it was then finally heard and judgment reserved. Pending the decision, however, respondent Nos. 1 and 2 filed Consent Terms dated 25th September, 2017 according to which respondent No.2 agreed to hand over an additional 8 (eight) flats along with 16 (sixteen) parking spaces to respondent No.1 in full and final settlement of the Development Agreement of 22nd September, 1999 and the Tripartite Agreement of 11th September, 2009.

11. The Learned Single Judge vide decision dated 9th October, 2017 in Notice of Motion No.147 of 2013, relied upon the interim order of 12th October, 2016 passed by the sole arbitrator, terming it as an interim award. The Single Judge was of the opinion that the apportionment of flats done by the arbitrator had become res judicata. The arbitrator s finding, that respondent No.2 was entitled to 28.5 flats, had attained finality since the appeals to the High Court and this Court had been rejected. Further, from these 28.5 flats, 12 flats along with 24 parking spaces formed part of respondent No.2 s entitlement, which, in turn, belonged to respondent No.1, and had been kept out of the scope of the arbitration since there was an ad-interim order of the High Court operating in that regard. Possession and keys of the remaining 16 flats out of the 28.5 flats had been handed over by the appellant to respondent No.2, for which the appellant s deposit had also been refunded by respondent No.2, as directed by the arbitrator.

12. The Single Judge further opined that even if respondent No.2 was ultimately held liable to compensate the appellant for damages, the same could not be recovered from the said 12 flats as these flats were ultimately and rightfully due to respondent No.1 (original plaintiff) and out of bounds for the appellant. The Single Judge rejected the appellant s argument that since respondent No.1 claimed through respondent No.2, any breach by respondent No.2 would automatically affect the entitlement of respondent No.1 as well.

13. The question as to whether respondent No.2 was obligated to hand over possession of 8 flats to respondent No.1 as per the settlement agreement dated 4th November, 2016 and the Consent Terms dated 25th September, 2017 and whether the appellant had to hand over the keys of the said flats to respondent No.1, were answered by the Single Judge in the affirmative, with the finding that respondent No.2 was the rightful owner of the balance 39.6 flats, including the 8 flats, out of the 88

constructed flats, and that the appellant had no rights over the same. The point of respondent No.2 being the rightful owner of the 8 flats was based on the following aspects:

> a. Respondent No.2 alone was entitled to develop the suit property as the letter of intent from the SRA was in favour of respondent No.2;
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> b. The appellant was a contractor who had been given the right to develop the suit property and his rights flowed from respondent No. 2;
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> c. Respondent No.2 had retained its right to construct 45% of the total area available and the appellant had even executed a Power of Attorney (POA) in favour of respondent no.2 entitling respondent No.2 to execute agreements for sale on ownership basis, leave and license, etc. for the flats and car parking spaces in the suit property, including the said 8 flats and similarly, respondent No.2 had executed a POA in favour of the appellant allowing the appellant to dispose of his flats and car parking spaces which he was entitled to receive as part of his 55% share. This was even conceded to by the appellant in the arbitration proceedings and in light of the same, the appellant was estopped from objecting to respondent No.2 handing over 8 flats to respondent No.1;

14. On the issue of the appellant not being the owner of the said flats, the Single Judge recorded that merely because the appellant had constructed the said flats and had the keys to the same, he could not be said to be the owner of the flats and he could not prevent respondent No.2 from handing over possession of the 8 flats to respondent No.1. The appellant merely had derivative rights over the suit property, flowing from respondent No.1 through respondent No.2, and any dispute between respondent No.2 and the appellant could not, in any way, affect the right of respondent No.1 over the suit property. The Consent Terms dated 25th September, 2017 between respondent Nos.1 and 2 clearly set out that respondent No.2 was obligated to hand over 8 flats to respondent No.1 and the right of respondent No.1 over the said flats was paramount to the rights of the other parties.

15. The Single Judge thus directed the appellant, by a mandatory order, to hand over keys and possession of the said 8 flats to respondent No.1 along with 16 parking spaces, recording that he had moulded the reliefs originally sought by respondent No.1 in the changed circumstances of the case and in order to shorten the litigation and do complete justice.

16. Aggrieved by the Single Judge s decision, the appellant challenged the said decision before the Division Bench of the High Court in Commercial Appeal No.173 of 2017. It was urged on behalf of the appellant that respondent Nos.1 and 2 had entered into the Consent Terms dated 27th September, 2017 with a view to defeat the appellant s claim. Unless respondent No.2 completed its entire obligations with respect to the building still under construction in the suit property, respondent No.1 was not entitled to receive its 8 flats as per the Consent Terms. The appellant further contended that the handing over of 8 flats to respondent No.1 was, in effect, a final relief since nothing further remained in the suit and the interim order of the Single Judge was in fact a final order and that the confirmation of the arbitral tribunal s order had no effect on the

proceedings before the Single Judge. These arguments were countered by respondent No. 1 which inter alia submitted that the actual dispute was between the appellant and respondent No.2 and that it (respondent No.1) was being made to suffer for such dispute. Respondent No.1 contended that the main development agreement had been executed between the Society and respondent No.1 and the rights of the other parties flowed through such agreement. Hence, there was nothing wrong in the Single Judge moulding reliefs in its favour. Respondent No.2 echoed respondent No.1 s arguments.

17. The Division Bench by its judgment and order dated 9th July, 2018, upheld the mandatory direction issued by the Single Judge at an interlocutory stage and rejected the appeal, holding that the Single Judge had addressed the various issues in detail and that it was right to mould the reliefs, even at the interim stage, in light of changed circumstances in the case. The Division Bench opined that the appellant was not left remediless in case respondent No.1 failed in the suit, as his remedies were kept open.

18. We have heard Mr. Mukul Rohatgi, learned senior counsel appearing for the appellant, Mr. Shyam Divan, learned senior counsel appearing for respondent No.1 and Mr. Mahendra K. Ghelani, learned counsel appearing for respondent No.2.

19. From the chronology of events, it is indisputable that the present appeal emanates from an interlocutory order passed by the learned Single Judge of the High Court on an application under Order XXXIX which, in turn, has been confirmed by the Division Bench. That interlocutory order has been passed in the suit filed by respondent No.1 against the appellant and respondent No.2 for the following substantive reliefs:

> "a) this Hon ble Court be pleased to declare that the suit agreement i.e. the said Development Agreement dated 22nd September 1999 (Exhibit "B" to the Plaint), read with the said Agreement dated 11th September 2009 (Exhibit "J" to the plaint), are valid, subsisting and binding between the Plaintiff and the Defendants.
>
> b) this Hon ble Court be pleased to order and decree the specific performance of the suit agreements dated 22nd September 1999 (Exhibit "B" to the plaint), read with Agreement dated 11th September 2009 (Exhibit "J" to the plaint) including handing over to the Plaintiff constructed area of 22500 sq.ft. in the free sale buildings along with proportionate car parking space in the form of 12 flats in Wings "A" and "B" of the building "Bay –View" situated on the property described in Exhibit "A" to the plaint and 24 car parking spaces.
>
> c) In the alternative to prayer clause (b) this Hon ble Court be pleased to order, decree and direct the Defendants to refund a sum of Rs.75,00,000/- together with interest at 18% as set out in the Particulars of Claim at Exhibit "M" to the plaint;
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> d) In the alternative to prayer (a) and (b) and in addition to prayer (c) above, this Hon ble Court be pleased order, decree and direct the Defendants to pay damages of Rs.173,47,53,425/- (Rupees One Hundred Seventy Three Crores Forty Seven Lacs

Fifty Three Thousand Four Hundred Twenty Five Only) as set out in particulars of Claim at Exhibit "M" to the plaint.

e) This Hon ble Court be pleased to pass an order of Mandatory and Permanent Injunction against the Defendants, their servants, agents, assigns and/or any other person acting through or under them from in any manner directly or indirectly dealing with or disposing of or alienating or parting with the possession of or creating third party rights in respect of the premises coming to the share of the Defendants in Wings "A" & "B" of the building "Bay-View" situated on the property described in Exhibit "A" to the plaint without first delivering to the Plaintiff, the possession of 22500 sq.ft. constructed areas per SRA sanctioned plan with proportionate car parking space in the form of 12 flats in Wings "A" and "B" of the building "Bay –View" situated on the property described in Exhibit "A" to the plaint and 24 car parking spaces."

20. During the pendency of the suit for aforementioned reliefs, respondent No.1/plaintiff filed Notice of Motion No.147/2013 for the following interim reliefs:

"(a) Pending the hearing and final disposal of the present suit, this Hon ble Court be pleased to injunct the Defendants, servants, agents, assigns and/or any other persons acting through or under them from in any manner directly or indirectly dealing with or disposing of or alienating or parting with the possession of or creating third party rights in respect of the premises coming to the share of the Defendants in Wings "A" & "B" of the building "Bay-View" situated on the property described in Exhibit "A" to the Plaint without first delivering to the Plaintiff, the possession of 22500 sq.ft. constructed areas per SRA sanctioned plan with proportionate car parking space in the form of 12 flats in Wings "A" and "B" of the building "Bay-View" situated on the property described in Exhibit "A" to the plaint and 24 car parking spaces.

(b) Pending the hearing and final disposal of the present suit, this Hon ble Court be pleased to appoint Court Receiver, High Court, Bombay and/or such other fit and proper person as Receiver of premises coming to the share of the Defendant No.1 in Wings "A" & "B" of the building "Bay-

View" situated on the property described in the Exhibit "A" to the Plaint with all powers under Order XL Rule 1 of the Code of Civil Procedure Code 1908 including the power to take possession of premises coming to the share of the Defendant No.1 in Wings "A" and "B" of the building "Bay-View" situated on the property described in the Exhibit "A" to the plaint and hand over to the Plaintiff the possession of constructed area as per SRA sanctioned plan in the free sale building in the form of 12 flats in Wings "A" and "B" of the building "Bay-View" situated on the property described in Exhibit "A" to the Plaint and 24 car parking spaces.

(c) ad interim reliefs in terms of prayer (a) & (b).

(d) for costs of the suit;

(e) for such further and other reliefs as this Hon ble Court may deem fit and proper in the nature and circumstances of the case."

21. Indeed, the learned Single Judge of the High Court granted ad-interim relief on 3rd December, 2012 during the pendency of the Notice of Motion. The same reads thus:

> "Heard the Learned Senior Advocates appearing for the parties. The following order is passed by consent without going into the merits of the case and keeping all the contentions of the parties open.
>
> (i) The Defendants shall not sell, dispose of, alienate, encumber, part with possession and/or create third party rights in respect of 4 flats in Wing "A" and 4 flats in Wing "B" which flats are already constructed and occupation certificate is obtained in respect of the same. The said 8 flats are identified on the sanctioned plan which is taken on record and marked "X" for identification.
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> (ii) The Defendants shall also not sell, dispose of, alienate, encumber, part with possession and/or create third party rights in respect of 4 flats in Wing "C", the construction of which is in progress. The said four flats are identified on the plan tendered in Court and marked "X".
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> (iii) It is clarified that the above 12 flats pertain to 45 per cent share in flats of Defendant No.1 as per the agreements entered into by and between Defendant Nos.1 and 2. The Defendant No.2 has informed the Court that Defendant No.2 will be contending that Defendant No.1 is not entitled to their 45 per cent share in the flats so constructed on the ground that Defendant No.1 has allegedly not complied with their obligations under the Agreements.
>
> (iv) The Defendants shall also not sell, dispose of, alienate, encumber, part with possession and/or create third party rights in respect of the proportionate car parking spaces in respect of the above 12 flats also identified on the plan marked "X".

2. Place the above Notice of Motion along with Notice of Motion (L) NO.3338 of 2012 taken out by Defendant No.2 under Section 8 of the Arbitration and Conciliation Act, 1996 for hearing and final disposal on 15th January, 2013." The aforementioned order was corrected on 17th December, 2012 in the following terms:

> "This application is for speaking to the minutes of the order dated 3rd December, 2012.
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> 2. In clause (i), 4 flats in Wing "A" and 4 flats in Wing "B" be read as 5 flats in Wing "A" and 3 flats in Wing "B".

Application is accordingly disposed of."

22. The said ad-interim arrangement continued during the pendency of Notice of Motion. However, while finally disposing of the Notice of Motion No. 147/2013, the learned Single Judge of the High Court vide judgment and order dated 9th October, 2017 passed a mandatory order directing the appellant to hand over 8 flats and 16 parking spaces to respondent No.1/plaintiff. For passing such mandatory order the learned Single Judge placed reliance on the decision of this Court in Gaiv Dinshaw Irani and Others Versus Tehmtan Irani and Others1, holding that the Courts ought to mould the relief in accordance with the changed circumstances for trying the litigation or to do complete justice. The view so taken by the learned Single Judge commended to the Division Bench.

23. What has, however, been glossed over by the High Court is that the Settlement Agreement dated 4th November, 2016 and the Consent Terms dated 29th September, 2017 have been entered into between the respondent No.1/plaintiff and respondent No.2/defendant No.1 inter partes. That could not be thrust upon the appellant/defendant No.2 who had executed a separate agreement with respondent No.2/defendant No.1. The appellant could be bound only by the agreement dated 10 March, 2003 in his favour and executed by him. Admittedly, the said agreement is the subject matter of arbitration proceedings, inter alia because respondent No.2 had failed to discharge its obligation thereunder. The appellant has already parted with the (2014) 8 SCC 294 possession of flats to respondent No.2 in furtherance of agreement dated 10th March, 2003 and respondent No.1/plaintiff could be accommodated only against those flats. Asking the appellant to hand over additional 8 flats and 16 parking spaces by way of mandatory order, would be to superimpose the liability of respondent No.2/defendant No.1 on the appellant for discharging its obligation qua respondent No.1/plaintiff in relation to the agreement entered between them dated 22nd September, 1999 and including Settlement Agreement dated 4th November, 2016 and Consent Terms dated 25th September, 2017, to which the appellant is not a party.

24. That apart, the learned Single Judge as well as the Division Bench have committed fundamental error in applying the principle of moulding of relief which could at best be resorted to at the time of consideration of final relief in the main suit and not at an interlocutory stage. The nature of order passed against the appellant is undeniably a mandatory order at an interlocutory stage. There is marked distinction between moulding of relief and granting mandatory relief at an interlocutory stage. As regards the latter, that can be granted only to restore the status quo and not to establish a new set of things differing from the state which existed at the date when the suit was instituted. This Court in Dorab Cawasji Warden Versus Coomi Sorab Warden and Others,2 has had occasion to consider the circumstances warranting grant of interlocutory mandatory injunction. In paragraphs 16 & 17, after analysing the legal precedents on the point as noticed in paragraphs 11-15, the Court went on to observe as follows:

> "16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting

> of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:
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> (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
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> (1990) 2 SCC 117 (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
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> (3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion." (emphasis supplied)

25. The Court, amongst others, rested its exposition on the dictum in Halsbury s Laws of England, 4th edition, Volume 24, paragraph 948, which reads thus:

> "A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempts to steal a march on the plaintiff, such as where, on receipt of notice that an injunction is about to be applied for, the defendant hurries on the work in respect of which complaint is made so that when he receives notice of an interim injunction it is completed, a mandatory injunction will be granted on an interlocutory application."

26. The principle expounded in this decision has been consistently followed by this Court. It is well established that an interim mandatory injunction is not a remedy that is easily granted. It is an order that is passed only in circumstances which are clear and the prima facie material clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demanded that the status quo ante be restored by way of an interim mandatory injunction. (See Metro Marins and Another Versus Bonus Watch Co. (P) Ltd. and Others3, Kishore Kumar Khaitan and Another Versus Praveen Kumar Singh4 and Purshottam Vishandas Raheja and Another Versus Shrichand Vishandas Raheja (Dead) through LRS. and Others5)

27. In the factual scenario in which mandatory order has been passed against the appellant, in our opinion, is in excess of jurisdiction. Such a drastic order at an interlocutory stage ought to be eschewed. It cannot be countenanced. 3 (2004) 7 SCC 478 4 (2006) 3 SCC 312 5 (2011) 6 SCC 73

28. Reverting to the decision in Gaiv Dinshaw Irani, (supra), relied upon by the High Court, the Court moulded the relief in favour of the party to the proceedings to do substantial justice whilst finally disposing of the proceedings and did not do so at an interlocutory stage. In other words, reliance placed on the principle of moulding of relief is inapposite to the fact situation of the present case.

29. Resultantly, the invocation of principle of moulding of reliefs so also the exercise of power to grant mandatory order at an interlocutory stage, is manifestly wrong. To put it differently, while analysing the merits of the contentions the High Court was swayed away by the consent agreement between the respondents inter partes to which the appellant was not a party. Thus, he could not be bound by the arrangement agreed upon between the respondents inter se. The appellant would be bound only by the agreement entered with respondent No.2 dated 10th March, 2003 and at best the tripartite agreement dated 11th September, 2009. The respondent No.2 having failed to discharge its obligation under the stated agreement dated 10th March, 2003, cannot be permitted to take advantage of its own wrong in reference to the arrangement agreed upon by it with respondent No.1/plaintiff and including to defeat the claim of the appellant in the arbitration proceedings.

30. It would have been a different matter if the High Court were to continue the ad-interim arrangement directed in terms of order dated 3rd December, 2012 and as corrected on 17th December, 2012, until the final disposal of the suit. However, by no stretch of imagination, the appellant could be directed to hand over 8 additional flats and 16 parking spaces to respondent No.1 with whom the appellant has had no independent agreement in that regard. The fact that respondent No.1 would get a right in the suit property in terms of agreement dated 22nd September, 1999, Settlement Agreement dated 4th November, 2016 and Consent Terms dated 25th September, 2017 with respondent No.2, cannot be the basis to set up a claim against the appellant and, especially because complying with the directions in the impugned order would result in bestowing advantage on respondent No.2 who has failed to discharge its obligation under the agreement dated 10th March, 2003 with the appellant.

31. In view of the above, we have no hesitation to conclude that the High Court committed manifest error and exceeded its jurisdiction in granting interlocutory mandatory injunction against the appellant.

32. Accordingly, the impugned judgment and order passed by the High Court deserves to be set aside but while doing so, we deem it appropriate to revive the ad-interim order passed by the Single Judge of the High Court on 3rd December, 2012 in Notice of Motion No.147/2013 and as corrected on 17th December, 2012, which shall operate until the disposal of the suit or until it is modified by the High Court on account of subsequent developments, if any, as and when occasion arises.

33. While parting, we make it clear that the observations made in this judgment are only for considering the matter in issue under consideration and shall not influence the substantive proceedings pending between the parties. The same be decided on its own merits.

34. The appeal is allowed in the aforementioned terms. No costs.

.....CJI.

(Dipak Misra) .....J. (A.M. Khanwilkar) .....J. (Dr. D.Y. Chandrachud) New Delhi;

August 21, 2018.