(2019) 02 DEL CK 0237

In the Delhi High Court

Case No : Regular First Appeal No. 313 Of 2007

Delhi Development Authority — APPELLANT

Vs

R.K. Jain — RESPONDENT

Date of Decision : 20-02-2019

Acts Referred:
Code Of Civil Procedure, 1908 — Section 96

Citation : (2019) 02 DEL CK 0237

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Sanjeev Sagar, Nazia Parveen, Rajesh Aggarwal

Final Decision : Disposed Off

Judgement

Valmiki J. Mehta, J

1. Though effectively, and the later part of this judgment will show that there were really no disputes which remained for being decided in this appeal, however, in order to understand the position that in reality there are no disputes, narration of the facts of the case would be required so as to dispose of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) filed by the defendant in the suit challenging the impugned Judgment of the trial court dated 29.11.2006.

2. The impugned Judgment dated 29.11.2006 decrees the suit for permanent injunction filed by the respondent/plaintiff and the trial court while decreeing the suit in favour of the respondent/plaintiff, the trial court has directed that the appellant/defendant cannot claim ground rent at 2½% of the price/premium paid for the property till 24.06.1998. The disputes arose because for the first five years, after the grant of allotment of the suit property purchased by the respondent/plaintiff in auction, the ground rent payable was to be of only Rs. 1/- per year and it is only after the expiry of the period of five years from the grant of allotment that the ground rent would become 2½% of the price/premium paid

for the property.

3. The facts of the case are that the appellant/defendant held an auction on 18.01.1985 for granting lease rights of the subject property which is a 148.64 sq. mtr. bearing plot no. B-2, in the Local Shopping Complex in MMTC/STC Colony, New Delhi. The respondent/plaintiff was the successful auction purchaser for a price of Rs. 18,07,000/-. The respondent/plaintiff deposited 25% of the auction amount of Rs. 4,51,750/- on his bid being accepted. The balance payment of 75% of the amount of Rs. 18,07,000/- was to be deposited by the respondent/plaintiff within 60 days from the date of allotment. The date of allotment as per the Terms and Conditions of the auction is the date when the appellant/defendant issues the letter communicating the allotment to the respondent/plaintiff. This Letter communicating the allotment by the appellant/ defendant to the respondent/plaintiff is dated 01.04.1985. On payment of the balance amount within 60 days from 01.04.1985 by the respondent/plaintiff, Clause 5 of the Terms and Conditions of the auction would come into operation whereby the appellant/defendant was bound to hand over the physical vacant possession of the property and also execute the lease deed in favour of the respondent/plaintiff.

4. However, disputes arose because the suit property was occupied by encroachers and the possession of the suit property was only given to the respondent/plaintiff on 29.09.1988. Though, at the time of handing over of possession by the appellant/defendant to the respondent/plaintiff on 29.09.1988, a lease deed would also ordinarily have been executed in view of Clause 5 of the Terms and Conditions of allotment, however since the respondent/plaintiff who had to deposit the balance amount of 75% within 60 days from 01.04.1985, and he did not deposit the same within 60 days, but deposited the said amount much later on 04.12.1986, issue arose of claim of interest by the appellant/defendant on this 75% amount for the period from 01.04.1985 till 04.12.1986. In this regard, the respondent/plaintiff had agreed by his Letter dated 14.03.1988 that they would pay interest for the period of delay of deposit of the 75% of the price at 18% per annum. This amount towards interest was thereafter deposited by the respondent/plaintiff on 17.03.1990 with the appellant/defendant.

5. Therefore, as on 17.03.1990, the respondent/plaintiff as the buyer of the property had paid the complete price of the property, and having paid the complete price, consequently, in terms of Clause 5 of the Terms and Conditions of allotment, the respondent/plaintiff was entitled to possession of the property as also the execution of the lease deed of the property. Execution of the lease deed was important because it was only on the respondent/plaintiff being granted a lease deed, would the respondent/plaintiff have been entitled to approach the appellant/defendant for sanction of the building plan for construction. As stated above, the possession of the suit property was already with the respondent/plaintiff with effect from 29.09.1988, and the balance payment of the price towards interest was paid by the respondent/plaintiff only

on 17.03.1990. Therefore, till 17.03.1990 the respondent/plaintiff could not legally seek execution of the lease deed or in the alternative an NOC from the appellant/defendant for making construction on the suit property. However, an NOC was granted by the appellant/defendant to the respondent/plaintiff some months later on 05.10.1990.

6. In the aforesaid facts, the issue which therefore required determination was that what would be the period of first five years, and in this period only Rs.1/- per year was payable as ground rent, and consequently therefore when would the period after the first five years commence for payment of ground rent at 2½% of the price/premium paid for the property.

7. As already stated above, ordinarily the obligation of the appellant/defendant for getting execution of the lease deed in favour of the respondent/plaintiff did arise on 17.03.1990 when the balance price was paid by the respondent/plaintiff to the appellant/defendant, but it is admitted by both the parties that though the first period of five years would commence from 18.03.1990 and would end on 17.03.1995, but since the NOC was only given by the appellant/defendant to the respondent/plaintiff on 05.10.1990, therefore, it is not disputed that the first period of five years will start on 06.10.1990 and end on 05.10.1995. The payment of the ground rent at 2½% of the price/premium of the property will therefore commence on 06.10.1995. The parties have therefore agreed before this Court that the date for commencement of payment of 2½% of the price/premium as ground rent by the respondent/plaintiff to be 06.10.1995, and once that is so, no other disputes remain to be decided between the parties.

8. Accordingly, this appeal is disposed of by observing that the entitlement of the appellant/defendant to claim ground rent at 2½% of price/premium of the property has commenced against the respondent/plaintiff only from 06.10.1995.

9. At the time when the subject suit was filed, and for the respondent/plaintiff to be successful in being granted interim injunction, the respondent/plaintiff had deposited the disputed amount in this Court, and this disputed amount was the amount being claimed by the appellant/defendant. This amount which is deposited in this Court is lying in an FDR and is thus earning interest. Therefore, now the appellant/defendant will calculate ground rent payable at 2½% of the price/premium from 06.10.1995, and accordingly raise a demand against the respondent/plaintiff payable as from 06.10.1995 till the respondent/plaintiff deposited the disputed amount in this Court. Till the amount due to the appellant/defendant from 06.10.1995 was deposited by the respondent/plaintiff in this Court, the appellant/defendant also be entitled to interest as per Rules. The interest due as per the Rules to the appellant/defendant will thereafter cease because of the amount being deposited in this Court. The appellant/defendant from the date of deposit in the Court will be entitled to only that interest which has accrued on the FDR created of the total amount of principal due from 06.10.1995 alongwith the interest as per Rules till the date of deposit. Putting it in other words, the appellant/defendant will not be entitled to interest as per

Rules after the deposit by the respondent/plaintiff of the amount due in this Court, and that the appellant/defendant thereafter will only be entitled to interest at that rate at which the fixed deposit has earned interest.

10. Accordingly, this appeal is disposed of by observing that the date of commencement of payment of ground rent at 2½% of the price/premium of the property in favour of the appellant/defendant and against the respondent/ plaintiff will be 06.10.1995. The appellant/ defendant will thereafter be entitled to claim interest on this amount payable as per the Rules till the date of deposit of the principal amount plus interest as per Rules, by the respondent/plaintiff in the suit in this Court. After the date of deposit by the respondent/plaintiff in this Court, the interest which will be payable to the appellant/defendant will not be as per the Rules of the appellant/defendant but will be the interest which has been earned on the fixed deposit.

11. Let the amount payable to the appellant/defendant in terms of this judgment now therefore be calculated by the appellant/defendant, and such calculation be given to the respondent/plaintiff through counsel and also to the counsel for the appellant/defendant, and if the amount available in this Court today in the fixed deposit would be more than the amount which the appellant/defendant is entitled to in terms of this judgment, then the remaining balance will be returned by the Registry of this Court to the respondent/plaintiff by encashing the FDR.

12. In view of the aforesaid discussion, the appeal is accordingly disposed of in terms of the aforesaid observations.

