(2011) 11 DEL CK 0418

In the Delhi High Court

Case No : Regular First Appeal No. 154 of 2011

Delhi State Industrial and Infrastructure Development Corporation Limited — APPELLANT

Vs

M/s. Indian Diamond Industry and Others — RESPONDENT

Date of Decision : 22-11-2011

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2011) 11 DEL CK 0418

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Renuka Arora, for the Appellant; Ruby Bedi, Advocate for respondent Nos. 1 and 2 and Mr. V. Srivastav, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This Regular First Appeal u/s 96 of Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree of the trial Court dated 31.10.2009. The appeal is filed by defendant No.2 in the suit and which entity allotted the subject plot No.83, Sector B, Pocket-E, Bawana Indl. Complex, Delhi to the plaintiff No.1/respondent No.1 which is a sole proprietorship concern of the plaintiff No.2, now represented by his legal heirs/respondent Nos.2(1) to 2(6). Respondent No.3/Delhi Financial Corporation (DFC) was defendant No.1 in the suit. Defendant No.1/respondent No.3 did not file any written statement in spite of many opportunities and therefore its defence was struck of in the trial Court. The appellant/defendant No.2 though filed its written statement yet led no evidence. The position therefore which emerged in the trial Court was that while plaintiffs/respondent Nos.1 and 2 led evidence, there was no evidence led on behalf of the defendants including the appellant/defendant No.2.

2. The facts of the case are that the original plaintiffs were allotted the subject plot vide allotment letter dated 23.10.2010 issued by the appellant/defendant No.2. The plaintiffs, pursuant to the allotment, paid an initial sum of Rs.

15,000/-. The plaintiffs thereafter deposited further amount of Rs. 45,000/- at the time of depositing the application and also deposited the sum of Rs. 75,800/- on 20.6.2000 making a total deposit of Rs. 1,35,800/-. The plaintiffs had to deposit a sum of Rs. 2,05,000/- and therefore it entered into a mortgage agreement with the respondent No.3/defendant No.1/DFC. The mortgage deed dated 8.10.2001 was signed between plaintiffs and the respondent No.3 whereupon the respondent No.3 paid a sum of Rs. 2,05,000/- to the appellant/ defendant No.2. The plaintiffs therefore accordingly deposited 50% of the amount with the appellant. The case of the plaintiffs was that respondent No.3 had agreed to sanction Rs. 13,35,000/- to the plaintiffs as loan out of which Rs. 4,42,000/- was to be used for the purpose of purchase of the plot i.e. payment to the appellant. The plaintiffs surprisingly and to their shock came to know that the appellant/defendant No.2 had refunded an amount of Rs. 2,05,000/- alongwith an amount of Rs. 1,35,000/- deposited by the plaintiffs from his own source to the respondent No.3/defendant No.1 and also cancelled the allotment of plot made to the plaintiffs vide letter dated 15.12.2003. All these actions took place without any show cause notice to the plaintiffs and without any fault of the plaintiffs and consequently the plaintiffs filed the subject suit for declaration for declaring the cancellation letter dated 15.12.2003 of the appellant as illegal. A mandatory injunction was also prayed to restore the allotment of the plot to the plaintiffs. It was also prayed that the respondent No.3/defendant No.1 be directed to deposit back the amount received by it from the appellant/defendant No.2.

3. The appellant/defendant No.2 filed its written statement and basically stated that the amount was refunded by it to the respondent No.3/defendant No.1 on account of supposed failure of the plaintiffs to comply with the terms and conditions of the loan agreement and because the respondent No.3 had intimated to the appellant to refund the amount. It was claimed that plaintiffs were intimated vide letter dated 14.7.2003 and was required to show cause, and thereafter the amount of Rs. 3,12,858/- was refunded to the defendant No.1/ respondent No.3.

4. As already stated above, none of the defendants including the appellant led any evidence whereas plaintiffs led evidence and proved the allotment letter as Ex.PW1/1, challan of payment as Ex.PW1/2, loan application as Ex.PW1/3, mortgage deed as Ex.PW1/5, various receipts of payments as Ex.PW1/6 to Ex.PW1/8, cancellation letter as Ex.PW1/9 and the representations dated 4.8.2003 and 27.1.2004 as Ex.PW1/10 to Ex.PW1/13.

5. The trial Court has accordingly decreed the suit in view of the fact that plaintiffs proved their case and the defendants failed to lead evidence by giving the following observations:-

16. I have carefully perused the documents relied and proved on record by the parties. Admittedly loan of Rs. 4,42,000/- was sanctioned in favour of the plaintiff after the DSIDC agreed to get the property mortgaged in favour of DFC.

Order of sanctioning of loan to the plaintiff for Rs. 4,42,000/- passed by DFC is Ex.PW1/3. Mortgage deed executed by the plaintiff in favour of DFC is Ex.PW1/5. Mortgage Deed has schedule of repayment (running page 338 of the file) which shows that amount of money advanced to the plaintiff was to be paid by the plaintiff in 30 installments as per schedule starting from 1.11.03. Initially five installments of Rs. 13,400/- were to be paid by the plaintiff for each quarter i.e. first installments on 1.11.03, second on 2.2.04, then on 1.5.04, then on 1.8.04 etc. The balance installments were to be of Rs. 15,000/- per quarter. Therefore, as per the documents relied upon and admitted by the parties first installment of repayment was to be made by the plaintiff on 1.11.03 whereas the plaintiff had paid amount of Rs. 39,948/- on 30.07.03 to DFC and amount of Rs. 2,05,000/- on 04.08.03 to DFC and further amount of Rs. 165/- on 6.8.03 thereby making total amount of Rs. 2,45,113/- approximately to DFC before month of November, 2003. DFC has failed to prove on record why the DFC demanded refund of money in July, 2003 when repayment of money was to start from November, 2003 and further once the plaintiff has made payment of Rs. 2,45,113/- by the month of August, 2003 to DFC, what was the occasion for DFC to demand refund of money from DSIDC, has not been stated by DFC. It is not the case of DFC that there were two loan sanctioned in favour of the plaintiff, one for the amount of Rs. 2,05,000/- and other amount of Rs. 4,42,000/- because admittedly plaintiff had applied for loan of Rs. 13.35 lacs including the cost of plot, cost of building and machinery. Out of which only amount of Rs. 4,42,000/- was sanctioned and plot in question was taken as security. Despite opportunities DFC neither filed any written statement nor led any evidence to counter the allegations of plaintiff, hence testimony of plaintiff is to be believed.

17. In view of the above facts, I am of the opinion that DFC had acted in haste, action of DFC was casual in seeking the refund of money from DSIDC. It was also in agreement between the parties that DFC could have called for return of money from DSIDC within six months from the cancellation of plot whereas in the present case DFC has called for refund of money in July, 2003 whereas plot was cancelled by DSIDC in December, 2003. Therefore, I am of the opinion that both the defendants i.e. DSIDC and DFC have been casual in their approach by not confirming to the procedure provided by law and had acted to the detriment of the plaintiff. It is further important to note that vide letter mark F dated 5.4.2004 DFC has written for refund of amount to DSIDC stating that plaintiff had already deposited the required amount in their account. No reasonable explanation has been tendered or proved by DFC for firstly seeking refund of money from DSIDC; secondly not showing whether there was any separate loan account for the amount of Rs. 2,05,000/- and thirdly when the DFC had already sanctioned the loan of Rs. 4,42,000/- in favour of the plaintiff i.e. cost of the plot it was the duty of DFC to make the payment to DSIDC or DFC till 01.11.2003. In my opinion action of DFC was unjustified in seeking refund of the money which has allowed the DSIDC to cancel the plot against the plaintiff, further, even DSIDC has not acted in proper manner as DSIDC refunded the amount to DFC before

cancellation of the plot, although agreement between the parties states that amount should be called by DFC within six months from the cancellation of the plot. Therefore, issue no.1 is decided in favour of the plaintiff and against the defendants.

18. Since issue no.1 has been decided in favour of the plaintiff, to the effect that action of DSIDC and DFC was unjustified in withdrawing the amount and also in cancelling the plot, issue no.2 is also decided against the DSIDC and DFC, because when it is held that cancellation of plot by DSIDC was wrong and illegal, it is requirement of principles of natural justice that the defendants be directed to further re-allot the plot in question to plaintiff. Hence, issue no.2 is also decided in favour of plaintiff.

19. In view of my above discussion, I am of the opinion that DSIDC and DFC have acted in casual and careless manner, officials have not confirmed to the contract between the parties and thus letter of cancellation of plot is liable to be set aside and it is declared that cancellation of plot by DSIDC against the plaintiff was illegal and unjustified. Therefore the defendant no.2 is directed to restore the allotment of plot in question in favour of the plaintiffs and do further needful formalities for the same and defendant no.2 is directed to deposit the balance money with defendant no.1.

(underlining added)

6. In view of the fact that the defendants including the appellant led no evidence, one cannot find any fault with the findings and conclusions of the trial Court. If it was the case of the appellant/defendant No.2 and the respondent No.3 that any alleged breaches were committed, they were required to lead evidence to prove the same, however, since no evidence was led, the trial Court was justified in decreeing the suit as per the evidence led by the plaintiffs. Counsel for the appellant sought to refer to terms and conditions of the loan application issued by the defendant No.1/respondent No.3, however when pointed out to the appellant''s counsel that how the same can be referred to inasmuch the defendant No.1/respondent No.3 itself did not lead evidence in the trial Court and nor did it file the written statement, counsel for the appellant had no answer.

7. In view of the above, I do not find any merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

