(2012) 05 DEL CK 0439

In the Delhi High Court

Case No : Regular First Appeal (OS) 51 of 2009

Dewan Chand Builders P. Ltd. and Others — APPELLANT

Vs

Ashoka Estates P. Ltd. and Others — RESPONDENT

Date of Decision : 02-05-2012

Acts Referred:

Citation : (2012) 05 DEL CK 0439

Hon'ble Judges : Siddharth Mridul, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Amrita Sanghi in RFAOS 106/2009, Ms. Renuka Arora and Ms. Raashi Beri in RFAOS 106/2009, for the Appellant; Uppal Harish, for the Respondent

Judgement

Pradeep Nandrajog, J.—Ashoka Estate Pvt. Ltd. and 16 living persons joined in a common action when they filed Suit No.1702/2001 praying for a decree in sum of Rs. 43,51,250/-, alleging that plaintiffs No. 2 to 17 were the co-owners of 24 Barakhamba Road, New Delhi held by them under a lease-hold tenure for a residential purpose and they had transferred their right in favour of plaintiff No.1, Ashoka Estate Pvt. Ltd. It was stated that with the amendment to the Master Plan for Delhi, a commercial building could be constructed on the plot, for which commercialization charges had to be paid to L&DO. Alleging that Dewan Chand Builders Pvt. Ltd., impleaded as defendant No.1 was controlled by Baldev Raj, Tilak Raj and late Shri Janak Raj, it was pleaded that a construction agreement dated March 01, 1972 was executed, as per clause-26 of which, the commercialization charges had to be paid by Dewan Chand Builders and to secure performance of said application, Baldev Raj, Tilak Raj and Janak Raj executed security bonds. Averring that there was a dispute with L&DO pertaining to commercialization charges, which issue was litigated by plaintiff No.2, and not knowing the fate of the litigation, Dewan Chand Builders executed a bank guarantee in sum of ` 12 lakhs to secure payment of commercialization charges, if any became due.

2. Issue pertaining to commercialization charges being payable was ultimately

decided against the land owners resulting in L&DO raising a demand for commercialization charges, under threat of re-entry, requiring the plaintiffs to challenge the demand, with respect to the quantum thereof, vide CW No.6742/2000, in which, in terms of an interim order dated November 10, 2000, the plaintiffs were required to deposit `40 lakhs towards commercialization charges, pending final adjudication of the writ petition, which they did.

3. The suit claims recovery of said amount with interest in terms of clause-26 of the agreement dated March 01, 1972.

4. It would need not much intelligence to understand, that the facts not being in dispute, the suit has been decreed in sum of `40 lakhs and on which interest has been directed to be paid @10% per annum from the date when suit was filed till realization.

5. The writ petition filed by the plaintiffs, in which interim orders were passed, requiring them to deposit `40 lakhs with L&DO has since been disposed of, after the impugned judgment was pronounced, on January 23, 2012. The demand raised by L&DO has been found to be faulty and hence quashed, requiring L&DO to recalculate the demand. Taking note of the fact that the plaintiffs had deposited `40 lakhs with L&DO in terms of the interim order dated November 10, 2000, the learned Division Bench has directed that said amount would be adjusted when fresh demand is raised, and needless to state, this would include a refund, if it is ultimately found that an excess amount was deposited.

6. Now, if an amount in excess was deposited by the plaintiffs and they obtain a refund from L&DO, to said extent, they would not be entitled to seek recovery from the defendants.

7. In said eventuality, the plaintiffs would have to seek not only the refund from L&DO but even interest on the excess deposited with L&DO.

8. Only if it is found, upon recalculation of the commercialization charges, that something more is payable, would the plaintiffs be entitled to the sum from the defendants as decreed.

9. Under the circumstances, with consent of learned counsel for the parties, the two appeals, which challenge the same impugned decision, stand disposed of declaring that the defendants of the suit would be bound by clause-26 of the agreement dated March 01, 1972 and the findings arrived at by the learned Single Judge qua they being liable under said clause would bind them; declaring further that upon L&DO re-working the commercialization charges payable as per decision dated January 23, 2012 disposing of WP(C) No.6742/2000 M/s. Ashoka Estate Pvt. Ltd. & Ors. v. UOI & Ors., if demand payable exceeds `40 lakhs, the impugned decree would stand and liability crystallized against the defendants would be cleared by them, and if the demand reworked out by L&DO, is reduced to a sum below `40 lakhs, said reduced sum would be payable by the defendants to the plaintiff together with interest @10% per annum from the date when the

subject suit was filed till date of payment and to that extent the impugned decree would then be treated as having been modified. Needless to state, in said eventuality, with respect to the excess amount deposited by the plaintiffs with L&DO they would be permitted to pursue the remedy to claim interest from L&DO.

10. It is specifically agreed that the execution proceedings initiated by the plaintiffs against the defendant would not be pursued by the plaintiffs till L&DO recalculates the demand in terms of the decision of the Division Bench dated January 23, 2012 in WP(C) No.6742/2000. No costs.

