

(2008) 02 DEL CK 0090

In the Delhi High Court

Case No : IA No. 7500 of 2007 in CS (OS) No. 2033 of 2003

Dr. Manav Rakshak and Another

APPELLANT

Vs

Civcon Engineering and Contracting Co. (India) Pvt. Ltd. and
Others

RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

Citation : (2008) 147 DLT 468

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Pankul Nagpal, for the Appellant; Amrita Sanghi, Devendra Singh and Subashshish for D-1, 2 and 3, Nisha Bhambhani, for D-4 and Sumit Thakur, for D-5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—This application under Order 1 Rule 10, Order 6 Rule 17 read with Section 151 CPC has been preferred on behalf of the plaintiffs seeking leave of this Court to amend the plaint.

2. The plaintiffs filed the instant suit for specific performance and mandatory injunction qua property bearing No. 27-A, Friends Colony (West), Mathura Road, New Delhi making four defendants. Defendant No. 1 is M/s Civcon Engineering and Contracting Co. (India) Pvt. Ltd., defendant No. 2 is the Director of defendant No. 1 company, defendant No. 3 is the builder and contractor and defendant No. 4 is an individual. In this application, plaintiffs plead that in the written statement filed by defendant, defendant had made a vague averment that the Flat in question had been sold to another person. The defendant did not disclose the name and address of the person and date of the sale deed or the sale consideration. plaintiff filed replication denying this averment since the plaintiff had no knowledge about the sale and no particulars of sale were provided. "Thereafter issues were framed and the plaintiff produced their witnesses and examined four witnesses besides plaintiff No. 1. After plaintiff's

evidence was closed, the case was fixed for defendant's evidence and defendant No. 1 to 3 filed affidavit of one Mr. Vikram Kumar. In its affidavit, defendant No. 2 Vikram Kumar disclosed the name of the purchaser of the plot as N.K. Sahani and after receiving this affidavit; plaintiff came to know that the property has been sold by defendants No. 1 to 3 to N.K. Sahani and Smt. Rani Sahani. Both are residents of 60B, Friends Colony, West Mathura Road, New Delhi. It is stated that the action of the defendants No. 1 to 3 in selling the property during pendency of the suit was illegal. Since the plaintiffs now have come to know the name of the purchasers, they want to amend the suit and intend to incorporate the name of Mr. N.K. Sahani "and Mrs. Rani Sahani as defendants No. 5 and 6 in the suit and the plaintiff accordingly wants to amend the body of the plaint by amending paragraphs 15A, 15B and 16 and 17 in order to incorporate the facts of the sale of the suit property during pendency of the suit to defendant No. 5 and 6.

3. In reply to this application, defendants No. 1 to 3 have taken the stand that the application was misconceived and not maintainable. It was filed by the plaintiff after closure of their evidence and when the stage was of the defendants". It is further stated that the plaintiff was very well aware of the subsequent transfer of the suit property on 12th February 2004 itself when the answering defendants filed written statement with specific pleading that the property has already been sold. The plaintiffs did not make any inquiries about this fact and slept over their rights. The plaintiffs, in the replication, rather denied this fact and stated that the property has not been sold. It is submitted that the defendants No. 1 to 3 alienated the property only legally. An interim order was passed by this Court on 25th November 2003 whereby the defendants were restrained from alienating the property or creating any third party interest subject to the condition that the plaintiffs would deposit the balance consideration of Rs. 50 lac in the Court. However, plaintiff failed to deposit the amount and thereafter this Court vacated the injunction order on 20th January 2004" The transfer qua third party was made by defendants after vacation of the interim order. The plaintiff had never been willing and ready to perform his part of the contract. Under these circumstances, the defendants No. 5 and 6 were neither necessary party nor transfer of property to defendants No. 5 and 6 by defendant No. 1 to 3 was without the knowledge of the plaintiff. There was deliberate negligence on the part of the plaintiffs that despite the defendant having disclosed that the property has been sold, the plaintiffs took no steps to find out details neither issued any interrogatory to defendants as to whom the property has been sold. The sale deed was executed between defendants and third party on 21st May 2004 The execution of a sale deed itself amounts to a notice to the general public about the sale of the property. The plaintiffs, by way of the amendment, only wants to fill the lacunae in the case.

4. A perusal of record would show that this Court on 25th November 2003 had passed an ex parte interim order restraining defendants from transferring the property, on an assurance of plaintiffs' counsel, that the plaintiff shall deposit the

balance sale consideration in the Court within a period of six weeks but the plaintiffs did not do so. On 7th January 2004, plaintiffs' counsel sought two weeks more time to comply the directions given by this Court. On 20th January 2004, the Court observed that the plaintiffs had failed to deposit the amount in spite of the Court's extending the time. This Court, Therefore, vacated the interim order. It is obvious that after 20th January 2004, the defendants were free to sell the property to any third party as the plaintiffs had been unable to deposit the balance sale consideration of approximately Rs. 50 lac in the Court. Thereafter, defendants No. 1 to 3 in the written statement made a categorical assertion that they have sold the property to third party. Despite this categorical assertion by the defendants in the written statement, plaintiffs took no steps to ascertain the facts neither issued any interrogatory on the defendants to know the details of the transactions and the persons in whose favor the transaction was made, but took the stand that the averment made by defendants was false and the property had not been sold to any third party. Thereafter issues were framed and the parties were asked to lead their evidence and the trial of the case began. After the plaintiffs' evidence was over, the plaintiffs want to amend the suit and also want to implead defendants No. 5 and 6 as parties to the suit. Defendants No. 5 and 6 cannot be added as parties to the suit since the sale of the property was made to defendants No. 5 and 6 after vacation of the interim injunction by this Court when the plaintiffs failed to deposit the balance sale consideration in the Court. The two purchasers cannot be burdened with unnecessary litigation and asked to appear in the Court. The property was sold to them by defendants No. 1 to 3 after plaintiffs failed to deposit the balance sale consideration and after this Court vacated the interim injunction. I consider that grave prejudice would be caused to the rights of the third party i.e. Mr and Mrs. Sahani if they are made to stand as defendants in the suit between plaintiffs and other defendants since they had no dispute, neither their purchasing the property is contrary to law. It is settled law that a belated application under Order 6 Rule 17 CPC has not to be allowed if it amounts to injustice to the parties and is not necessary for the purpose of determining the real controversy between parties. The amendment has also to be refused when the other party cannot be placed in the same position if the plaintiffs had been originally vigilant. In the instant case, the defendants 1 to 3 and 5 and 6 cannot be put in the same position. This sale was done in May 2004. The application for amendment has been made much belatedly i.e. in June 2007, i.e. after lapse of more than three years of sale of the suit property. The relief against defendants No. 5 and 6 shall be barred by limitation.

5. In view of my above discussion, the application is hereby dismissed being devoid of any merits.

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Parties to appear before the Joint Registrar for leading remaining evidence on 20th March 2008.