
(2007) 08 DEL CK 0219
In the Delhi High Court
Case No : CS (OS) No. 76 of 1998

Gammon India Limited

APPELLANT

Vs

Capricon Industries Ltd. and Others

RESPONDENT

Date of Decision : 07-08-2007

Acts Referred:

Limitation Act, 1963 — Article 54

Citation : (2007) 08 DEL CK 0219

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Jagdeep Anand, for the Appellant; Manish Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The plaintiff has filed the present suit for specific performance and mandatory injunction in respect of agreement dated 09.07.1986 seeking execution of the sale deed and transfer documents in favor of the plaintiff in respect of the second floor of premises No. 16-17, Local Shopping Centre, Madan Gir, New Delhi.

2. It is stated in the plaint that the defendants had built a commercial complex at the aforesaid premises and in pursuance to the discussions between the parties, the agreement to sell was arrived at for an area admeasuring 4,000 square feet for a total price of Rs 23,50,000/-. An advance of Rs 3.5 lakh was paid on 03.01.1986 and thereafter on 09.07.1986 (ExPW1/2) the agreement was executed between the parties. The possession had to be given over after completion of construction on or before 15.09.1986. The salient features of the agreement are re-produced hereinafter:

Clause 1: The seller hereby agreed to transfer by way of sale to the purchaser the said floor with all rights, title and interest of the seller in and or the said floor.

Clause 2 : As and by way of consideration for the said sale, the purchaser shall

pay to seller a sum of Rs 23,50,000/- (Rupees Twenty Three Lakhs Fifty Thousand Only), of which a sum of Rs 3,50,000/- (Rupees Three Lakh Fifty Thousand Only) has already been paid by the purchaser as and by way of earnest money for which receipt dated January 9, 1986 has been passed by the seller in favor of the purchaser. The purchaser has also paid to the seller the 2nd, 3rd, 4th and 5th Installments of Rs 2,35,000/- (Rupees Two lakh Thirty Five Thousand only) each as per Schedule 1 hereunder written for which separate receipts have been passed by the seller on February 2, 1986, March 3, 1986, May 26, 1986 and June 20, 1986 respectively in favor of the purchaser. The balance Installments shall be paid by the purchaser as per the Schedule 1 hereunder written.

Clause 3: The seller shall obtain the necessary permission/authorization/ no objection certificate from the Delhi Development Authority and from such other authorities, bodies and individuals as will be necessary for the effective transfer of the said floor in favor of the purchaser and will apprise the purchaser of such permission etc. by leaving with the purchaser a copy thereof. The seller shall fulfill all and everyone of the conditions, if any, that may be stipulated by such authorities, bodies and individuals to be fulfilled by the seller before the transfer is completed so that the purchaser enjoys the property quietly and peacefully. The seller agrees that it will obtain such permission or fulfill all these conditions as its costs without making the purchaser to exert itself in any manner.

Clause 4 : The seller shall hand over vacant, peaceful and lawful possession of the said floor to the purchaser duly completed in all respects, on or before Fifteenth of September 1986.

Clause 5: The date of handing over of the said floor as per 4 above, being the essence of contract, the seller agrees to pay damages to the purchaser from the said date, calculated at the rate of 24 % per annum on the amounts paid till the said date, until the date of handing over the premises to the purchaser as in para (4) above.

Clause 6 : The seller shall well equip, well furnish the said floor and shall provide amenities in relation to the said floor which will inter alias include all sanitary fittings, plumbing, water supply fittings and fixtures, lift arrangement (to be shared) necessary fixtures for coolers, air conditioner, fans and other electric fittings, power and light wiring, telephone and telex wirings.

Clause 12: The seller shall arrange to complete the transfer of the said floor and get it registered with the concerned authorities.

3. The plaintiff paid the entire consideration of Rs 23,50,000/- as set out in the agreement but the possession of the premises could not be handed over to the plaintiff in time. The possession was handed over only on 14.09.1987 after delay of exactly one year from the agreed date of handing over possession in terms of Clause 4 of the agreement. The electricity connections were not provided even as on that date nor was the sale deed executed in favor of the plaintiff. The plaintiff

has thus been constrained to file this suit seeking specific performance of the agreement.

4. It may be noticed that it is not in dispute that subsequently in pursuance to the writ petition filed in this Court, the plaintiff has managed to obtained permanent electricity connection and that problem is sorted out. This is in terms of the Order dated 28.05.1999 in Civil Writ Petition No. 1935/1999 which is ExPW1/3. However the plaintiff claims damages in terms of Clause 5 of the agreement to sell for the delay of a period of one year in handing over possession which amounts to Rs. 5,64,000/- and also seeks execution of the registered document in its favor.

5. In the written statement filed by the defendants, the facts are really not in dispute. The defense to non execution of the transfer deed/sale deed is that the defendants have called upon the DDA on a number of occasions for transfer but to no avail. A plea of limitation is however raised.

6. On the pleadings of the parties, by an order dated 15.07.2004, the following issues were framed:

- (1) Whether the suit is barred by limitation? OPD
- (2) Whether any cause of action arose in favor of the plaintiff and against the defendants? OPD
- (3) Whether proper court fee has not been affixed on the plaint by plaintiff? OPD
- (4) Whether the suit is liable to be dismissed for misguide and non joinder of parties? OPD
- (5) Whether the plaintiff is entitled to the relief of specific performance of the agreement dated 09.07.1986? OPP
- (6) Whether the plaintiff is entitled to the damages as claimed? OPP
- (7) The plaintiff examined Sh. Umesh Gupta as PW1 while the defendants examined Sh. Vinod Arora as DW1.
- (8) I have heard learned Counsel for the parties and the findings on the issues are as under:

Issue No. 1

Whether the suit is barred by limitation? OPD

9. The onus was on the defendants to prove the issue. The agreement to sell was executed on 09.07.1986. The possession was handed over only on 14.09.1987. It is not the case of the defendants that they ever repudiated the obligation to execute the sale deed but in fact the plea taken is that they have been writing letters to the DDA for necessary permission.

10. In my considered view, learned Counsel for the plaintiff has rightly contended

that under the provisions of Article 54 of the Limitation Act, 1963 the period prescribed for limitation is three years from the date of performance and in the absence of the same, from the date of notice of refusal. The said Article is reproduced as under:

Serial No. Description of Suit Period of Limitation Time from which period begins to run 54 For specific performance Three years The date fixed for performance of a contract. the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

The plaintiff had issued a legal notice dated 26.07.1991 (Mark-M) and 11.09.1989 (Mark-N) for execution of the sale deed, but at no stage were the defendants ever refusing to execute the sale deed.

11. It cannot be said that the suit is barred by time. Insofar as the relief of execution of the sale deed is concerned. The defendants have not discharged the onus in this behalf.

12. There is however a dual claim made in the suit since the plaintiff also seeks to recover a sum of Rs 5,64,000/- as damages for delay in handing over possession. The stipulated date for handing over possession in terms of Clause 4 of the agreement was 15.09.1986. The possession was actually handed over on 14.09.1987. The delay of one year had occurred and once the possession was handed over, the period of delay was known. Clause 5 of the agreement provides that damages would be paid by the defendants to the plaintiff at the rate of 24 per cent per annum until the date of handing over of possession. The amount could thus be quantified on 14.09.1987 when the possession was handed over. The suit is however filed only on 10.11.1997 almost ten years after handing over of possession. The right to claim damages could be exercised only within a period of three years of the cause of action and thus the plaintiff cannot now seek to recover damages by filing a suit after ten years. Thus this claim is barred by time.

Issue No. 2.

Whether any cause of action arose in favor of the plaintiff and against the defendants? OPD

13. The onus in respect of this issue again like issue No. 1 was on the defendants. The cause of action has arisen in favor of the plaintiff on account of the failure to comply with the obligations in terms of Agreement dated 09.07.1986 (ExPW1/2). There is a continuing cause of action on account of the failure of the defendants to execute the conveyance deed in favor of the plaintiff and thus the plaintiff does have a cause of action to file this suit. Issue No. 3 Whether proper court fee has not been affixed on the plaint by plaintiff? OPD

14. Onus for issue No. 3 was on the defendants. The counsel for the defendants has not been able to point out as to how the suit is not properly valued for the purposes of court fees and jurisdiction. The issue is answered accordingly. Issue No. 4 Whether the suit is liable to be dismissed for misguide and non joinder of

parties? OPD

15. It is the contention of the learned Counsel for the defendants that the DDA was a necessary party to the present suit as its permission was required.

16. In my considered view, the agreement between the parties itself clearly provided that the obligation is on the defendants to obtain necessary permission for executing the sale deed in terms of Clause 12. It was for the defendants to do the needful and it is not for the plaintiff to enforce a claim against the DDA so long as the defendants are arrayed in the suit.

17. Insofar as the impleadment of the present defendants is concerned, the agreement was executed in favor of the plaintiff by defendant No. 1 as an associate of defendant No. 3. Thus both defendant Nos. 1 and 3 are necessary parties to the present suit. Defendant No. 2 has been arrayed as the Managing Director of defendant No. 1. However, there is nothing on record to show any personal obligations of defendant No. 2 apart from the obligations of defendant No. 1. Thus a decree, if any, is only liable to be passed against defendant Nos. 1 and 3.

Issue No. 5

Whether the plaintiff is entitled to the relief of specific performance of the agreement dated 09.07.1986? OPP

18. In view of what is stated above and the obligations set out in the agreement between the parties which is ExPW1/2, there is an obligations on defendant Nos. 1 and 3 to execute the sale deed in favor of the plaintiff and thus the plaintiff is entitled to a decree of specific performance of the said agreement. It is for defendant nos 1 and 3 to take necessary steps including permission from the DDA for sale deed in favor of the plaintiff. The possession has already been handed over to the plaintiff on receipt of the full consideration.

Issue No. 6

Whether the plaintiff is entitled to the damages as claimed? OPP

19. The claim of damages is based on Clause Nos. 4 and 5 of ExPW1/2 where the defendants had agreed to hand over the possession to the plaintiff by 15.09.1986. Since the full consideration had been received, the money of the plaintiff remained blocked and thus any delay in handing over possession was to invite interest at the rate of 24 per cent per annum. It is this claim amount which is sought to be recovered by the plaintiff being a pre-estimate of damages by the parties and thus the plaintiff is entitled to recover the amount.

20. It may however be noted that this claim is held to be barred by time while deciding issue No. 1. Hence, the issue is answered accordingly.

Relief

21. In view of the findings arrived at in issues aforesaid, a decree for specific

performance of the agreement to sell dated 09.07.1986 (ExPW1/2) is passed in favor of the plaintiff and against the defendant Nos. 1 and 3 for execution of the sale deed and other transfer documents in favor of the plaintiff in respect of second floor of premises No. 16/17, Local Shopping Centre, Madan Gir, New Delhi on the said defendants completing necessary formalities in accordance with law. The occasion for directions as prayed for in prayer Clause (d) for execution of a document by the Registry of this Court would arise only on the failure of defendant Nos. 1 and 3 to comply with the decree.

The plaintiff is also entitled to proportionate costs.

The decree sheet be drawn up accordingly.