**(1999) 03 DEL CK 0044**

**In the Delhi High Court**

**Case No :** I.A. No''s. 5583/98 and 6782/98 and In Suit No. 1358/98

J.K. Industries Ltd. APPELLANT

Vs

International Cooperative Alliance Domus Trust and Others RESPONDENT

**Date of Decision :** 19-03-1999

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

**Citation :** (1999) 3 AD 545 : (1999) 79 DLT 1 : (1999) 50 DRJ 364

**Hon'ble Judges :** Dalveer Bhandari, J

**Bench :** Single Bench

**Advocate :** Mr. Mukul Rohtagi, Mr. O.P. Khaitan, Mr T.K. Ganju, Ms. Mukti Chaudhary and Ms Sandhya Kohli, for the Appellant; Mr. Ravinder Sethi and Mr. V.P. Singh, Ms Anju Bhattacharya, Mr. Mukul Dhawan and Mr. V.N. Kaura, for the Respondent

## Judgement

Dalveer Bhandari, J.—This order will dispose of is No. 5583/98 (Under Order 39 Rules 1 & 2) and I.A. No. 6782/98 (Under Order 39 Rule 4).

2. The suit was registered on 14th July, 1998 and on that date while issuing summons to the defendants this Court also granted ad interim ex parte injunction restraining defendant No. 1 from selling the property in question to the defendant No. 4. This injunction application has now come up after the service of the defendants for confirmation/vacation of the injunction order. The defendants have filed a written statement and reply to I.A. No. 5583/93 and the plaintiff has filed reply to I.A. No. 6782/98.

3. The plaintiff agreed to purchase the property bearing No. 43, Friends Colony (East), New Delhi from defendants Nos. 1 to 3 for a sale consideration of Rs. 13.5 crores for the entire plot area measuring 3860 Sq. Yds. Along with all the buildings and structure constructed thereon subject to the defendants obtaining necessary permission under Chapter XXC of the Income Tax Act and permission from the Income Tax Authority u/s 230A, from the Urban Land Ceiling and Regulation Authority. It is the further case of the plaintiff that by a letter dated

15.4.1998, the terms of sale were conveyed to defendants Nos. 1 to 3. The letter dated 15.4.1998 reads as under:

J.K. INDUSTRIES LIMITED 3, Bahadurshah Zafar Marg, New Delhi - 110002 April 15, 1998. Fax Msg Fax No. 6835568 M/s. International Co-operative Alliance Bonow House, 43, Friends Colony(East), New Delhi-110065. Kind Attn. : Mr. Guo Yong Kang, Dy. Regional Director.

Dear Sirs.

Re: Freehold property bearing No. 43 Friends Colony (East), New Delhi-110065 admeasuring 3860 Sq. Yds. Along with Buildings and other structures constructed thereon.

Please refer to the discussion we had with your Mr. Kang this morning. We are in principle agreeable to purchase the aforementioned property for a total consideration of Rs. 13.5 Crore (Thirteen and half crore) for the entire plot Area of 3860 Sq. Yds. Along with all Building and structures constructed thereon subject to inter alia, the following conditions:

1. That you shall make out a good and marketable title in respect of the said property free from all encumbrances, liens and lis pendence.

2. You shall obtain all necessary permissions and approvals including the permission from the appropriate Authority under Chapter XXC of the Income Tax Act, permission from the Income Tax Authority u/s 230A, permission from the Urban Land Ceiling & Regulation Authority and any other authority that may be necessary for selling the same to us.

3. We confirm that the entire payment to you would be by cheque.

4. We confirm that we would pay 10% of the total consideration amount at the time of signing the Agreement for Sale Balance 90% would be paid at the time of Conveyance in our favor Along with vacant physical possession.

5. You shall discharge all liability in respect of the said property till the date of conclusion of transfer.

6. That if there are more than one authorised nominees of the trust, the agreement and the sale deed will be signed by all the authorised persons, on the above terms.

We hope that the above offer is acceptable to I.C.A. Please convey your acceptance to finalise the terms of Agreement for Sale and time schedule for completing the entire transaction.

In case the offer is acceptable, please furnish copies of all relevant documents and papers relating to the said property including Court papers, if any, to us for our perusal and verification.

Thanking you,

 

Yours faithfully,

D.C. Jain

Authorised Signatory"

4. The substance of this letter is that the plaintiff agreed to purchase the property in question for Rs. 13.5. Crores which of course was later on changed to Rs. 14 Crores. The entire area of 3860 Sq. Yds. is mentioned in the letter. It is also mentioned that the defendants shall obtain necessary permission and approval from the concerned authorities for sale of the property in question.

5. It is also indicated that 10 per cent of the sale consideration amount shall be paid at the time of signing the agreement for sale and 90 per cent would be paid at the time of conveyance in favor of the plaintiff Along with the vacant physical possession. In the letter it is mentioned that in case the offer is accepted to defendants Nos. 1 to 3 then they were required to furnish all relevant documents and papers relating to the said property including court papers for perusal and verification.

6. It is further alleged by the plaintiff that in response to the offer of the plaintiff dated 15.4.1998 the defendant Nos. 1 to 3 accepted the same vide its letter dated 24.4.1998. The letter reads as under:

ICA DOMUS TRUST

(DR. BONOW MEMORIAL TRUST)

Regd. Office: Bonow House,

43, Friends Colony (East),

New Delhi - 110065, India.

URGENT

24 April, 1998.

Fax : 91-113322059

Messrs J.K. Industries Limited,

3, Bahadurshah Zafar Marg,

New Delhi-110002.

Kind Attn.: Mr. D.C. Jain, Vice-President

(Operations P & B).

Dear Sirs,

Sale of Bonow House, 43 Friends Colony (East), New Delhi-65.

Further to the discussions with Mr. Guo Yong Kang, Deputy Region al Director, had with you on the 21st and 24th April, 1998 and your revised offer on your letter of 15th April, we wish to confirm that your final offer at Rs.14 crores (Rupees Fourteen Crores) is acceptable to us with the conditions that 10% down payment will be made by you at the time of signing the agreement and the balance 90% should be paid outright within three months after the agreement is signed.

The draft of the agreement can be mutually discussed and finalised in early May, 1998 in the presence of our legal advisers.

Thanking you,

Yours faithfully,

Robby Tulus

Authorised Representative

of ICA DOMUS TRUST"

7. In the said letter defendant Nos. 1 to 3 had mentioned that they (defendant Nos. 1 to 3) confirmed the final offer of Rs. 14 crores with the condition the 10 per cent down payment will be made by the plaintiff at the time of signing the agreement and the 90 per cent should be paid outright within three months from the agreement and the draft of the agreement was to be finalised in early May, 1998. According to Mr. Rohtagi, the learned Senior Counsel appearing for the plaintiff, the letter dated 24.4.1998 is clear acceptance of the offer dated 15.4.1998 sent by the plaintiff to the defendant in which it is also indicated that this has reference to your letter dated 24.4.1998 confirming sale of the above property to us". It is also mentioned in the letter that we have discussed in detail the draft agreement for sale and the same was finalised.

8. Mr. Rohtagi submitted that in pursuance to the offer of the plaintiff vide letter dated 15.4.1998 the defendant has furnished copies of all relevant documents and papers relating to the said property which are are follows:

1. Photocopy of the Board Resolution dated 22nd April, 1997 authorising Mr. Bobby Tulus and Mr. D.C. Vishwanath with fair type copy.

2. Photocopy of the order of the Competent Authority dated 6.3.1987 with fair type Copy.

3. Photocopy of the notification dated 8.4.1987 issued by the Competent Authority with fair type copy.

4. Photocopy of the Notification dated 8.4.1987 as published in the Delhi Gazettes.

5. Photocopy of the Notification dated 22.5.1987 notifying that the excess land shall be deemed to have been acquired by the Delhi Administration with effect from 21.6.1987 with fair type copy.

 

6. Photocopy of the Application for permission to transfer of property No. 43 in favor of National Cooperative Development Corporation Along with Annexures.

7. Photocopy of the Sale deed dated 11th/19th September, 1967 executed between Srenska Enterprenad Alticboiaget (SENTAB) and ICA Domus Limited.

8. Photocopy of the Conveyance deed dated 25th September, 1962 between Mr. D.D. Kapila & M/s. Inter Continent (Tranvancore) (P) Ltd.

9. Photocopy of the House Tax Receipt dated 6th September, 1985 for Rs. 12,758/-.

10. Photocopy of the Sale Deed dated 2nd July, 1965 executed between M/s. Intercontinent (Tranvancore) (P) Ltd. N.D. and Srenska Enterprenad Aktieboiaget (SENTAB) Bombay.

11. Photocopy of the Settlement deed dated 31st July, 1990 by ICA Domus Ltd. in favor of ICA Domus Trust.

12. Photocopy of the Power of Attorney dated 27th July, 1977 executed by ICA Domus Ltd. in favor of Mr. Rajaguru Bandara Rajaguru as the lawful attorney of the company.

13. Photocopy of the Registered Sale Deed dated 15.9.1995 entered in between Nathuran Friends Colony Co-operative House Building Society Ltd. and Mr. D.D. Kapila.

14. Photocopy of the Agreement to sell dated 19th March, 1951 entered into between Friends Colony Co-operative House Building Society Ltd. and Shri D.D. Kapila."

9. Mr. Rohtagi, the learned counsel for the plaintiff submitted that this fact further goes to show that the offer of the plaintiff was accepted by the defendant No.1 and only formal documentation remained to be done. Otherwise, the defendant would not have furnished all these documents to the plaintiff. Mr. Rohtagi also submitted that the plaintiff was willing to perform his part of the contract and earnest money was readily available with the plaintiff. He also submitted that all material and essential terms were agreed between the parties and consequently the plaintiff''s offer was accepted by the defendants and there was a concluded contract with the defendants and only formal documents had to be executed. It is also submitted by the plaintiff that the sale price of the property was clearly mentioned; and the time was also indicted. It was further agreed that 10 per cent amount shall be paid at the time of signing of the agreement for the sale and the balance 90 per cent was to be given at the time of execution of the conveyance Along with the vacant physical possession of the property in question.

10. In this view of the matter, the offer given by the plaintiff was accepted and a concluded contract between the parties came into existence. It only required formal solemnisation of the agreement.

 

11. Mr. Rohtagi further submitted that at this stage he has to show only a strong prima facie case in his favour.

12. Mr. Rohtagi also submitted that in case the defendant Nos. 1 to 3 are permitted to sell or dispose of the property after the concluded contract with the plaintiff, then irreparable harm and injury would be caused to the plaintiff and the whole purpose of filing the suit shall be vitiated and it would be virtually impossible to retrieve the property in question, whereas the defendants shall not be put to any irreparable harm or injury.

13. Mr. Rohtagi submitted that in this view of the matter, the injunction granted in favor of the plaintiff be confirmed. Mr. Rohtagi placed reliance on the decided case of this Court J.K. Rajgarhia Vs. Ravi Singh and Others, . The facts of this case are quite akin to the facts of the case at hand. The relevant observation of the Court reads as under:

"What is more material than the expression of desire by the parties to resort to a formal document, is the intention of the parties behind the expression of that desire. Was the desire to execute further contract a condition or term of the bargain or a mere expression of parties wish to formalise what had already been agreed upon? This would be the real question and to answer it one must know as to whether a material term had been left out for future negotiations between the parties or not."

According to Mr. Rohtagi, if this principle is applied in the present case, then it is clear that all material terms were agreed between the parties and nothing was left for the negotiations between them except to give formal shape to the agreement.

14. Mr. Rohtagi submitted that in this view of the matter, there is acceptance of prima facie case in his favour. He also submitted that the balance of convenience is also in favor of the plaintiff and non-grant of injunction would result in irreparable injury and harm to the plaintiff. Whereas grant of injunction would not prejudice the interests of the defendants to that extent. In view of all these factors, the injunction granted by this Court should be made absolute. He also placed reliance on Kollipara Sriramulu Vs. T. Aswathanarayana and Others, . In this case, their Lordships of the Supreme Court have held as under:

"A mere reference to a future formal contract does not prevent the existence of a binding agreement between the parties unless the reference to a future contract is made in such terms as to show that the parties did not intent to be bound until a formal contract is signed. The question depends upon the intention of the parties and the special circumstances of each particular case. In the present case the evidence did not show that the drawing up of a written agreement was a pre-requisite to the coming into effect of the oral agreement."

Mr. Rohtagi submitted that in view of this judgment also the injunction has to be confirmed.

15. Mr. Rohtagi also cited Ram Krishan Singhal Vs. Executive Engineer; (1991 (1) Arbitration Law Reporter 154). In this case it is held:

"It is not necessary that a formal contract would have been signed by both the parties before a contract could be concluded. A contract can come into existence by exchange of letters. A written binding contract has come into existence between the parties and there exists arbitration clause governing the dispute arising out of the contract."

On the strength of this case also the injunction has to be confirmed.

16. Mr. Sethi, the learned counsel appearing for defendant Nos. 1 and 2 submitted that there was no concluded contract between the parties and the matter was only at a negotiation stage. In this view of the matter, the plaintiff is not entitled to the injunction and this and interim ex-parte injunction already granted is liable to be vacated.

17. Mr. Sethi submitted that the total area of the land in question is 3860 Sq. Yds. whereas out of that 360 Sq. Metres is in ceiling and the defendants could not have sold this land to the plaintiff because it was an excess land. The plaintiff had mentioned about 3860 Sq. Yds. in the offer dated 15.4.1998. Therefore, when the defendant could not sell the aforesaid area being an excess area, how could there be a concluded contract between the parties? He submitted that both the letters dated 15.4.1998 and the so called acceptance letter dated 24.4.1998 do not mention that the agreement will be executed with the plaintiff and his nominees. Whereas now the plaintiff is insisting that the agreement be executed with the plaintiff and his nominees.

18. It is submitted that the latter dated 24.4.1998, at best can be considered as a counter offer from the side of the defendants or at the most a conditional acceptance of the contract but it cannot be termed as a concluded contract between the parties.

19. Mr. Sethi mentioned that according to the letter of 15.4.98 the balance 90% amount was to be paid at the time of the execution of the agreement, whereas according to the letter dated 24.4.1998 the balance 90% amount had to be paid within three months of the execution of the agreement. Since the material terms were not accepted by the letter dated 24.4.1998, Therefore, there is no question of a concluded contract between the parties.

20. Mr. Sethi also submitted that it was also not decided by the defendants in whose favor the conveyance deed was to be executed. In these circumstances it cannot be said that there was a concluded contract between the parties. The whole matter between the parties was a negotiation stage and the concluded contract never came into existence.

21. He also referred to the letter dated 26.5.1998 sent by the plaintiff to the defendants. According to him, if this letter is comprehended properly then it gives a clear impression that there was no concluded contract between the

 

parties.

22. Mr. Sethi has filed a compilation of seven judgments but, during the course of arguments has placed reliance on two judgments only. He placed strong reliance on the Full Bench Judgment AIR 1952 220 (Nagpur) . The relevant paras of this judgment read as under:-

"(9) Many contracts and particularly contracts for the sale & purchase of land, have three well defined stages, and it is always a matter for construction, when these three stages are present as to which the parties intended to be the crucial stage at which both sides are to be bound.

(10) The first of these stages is the period of negotiation in which suggestion and counter-suggestions are bandied to and fro. Naturally this can either be oral or by letter. When this stage is concluded, we reach the second stage at which the parties have reached agreement. At this point they can either settle the matter finally or, as is more usual in contracts of this type, reduce their points of agreement to writing and agree to have them drawn up in a formal document by their legal advisers & agree not to be bound till they have singed that formal document. The execution of the formal document is the third stage. Which of these stages is intended to be the crucial one is a matter of construction & must depend on the facts of each particular case....."

23. Mr. Sethi also placed reliance on the Supreme Court judgment in the case of Ganesh Shet Vs. Dr. C.S.G.K. Setty and Others 1988) 5 S.C.C.381 to strengthen his submission.

24. Mr. V.N. Kaura, the learned counsel appearing for defendant No.4 submitted that the Court should not grant any relief to the plaintiff. In cases, the plaintiff''s prayer is granted and injunction order is made absolute, then it would be disastrous for defendant No. 4. Therefore, the injunction order be vacated.

25. Mr. Kaura also submitted that in matters pertaining to public charitable trusts, the trust can function only through its trustees. In the instant case, no particular trustee was authorised by any resolution to act on behalf of the trust. He also submitted that even in cases of concluded contracts, it is always discretionary for the Courts to grant a decree of specific performance. In the fact and circumstances of this case the plaintiff is not entitled to any injunction. Reference was also made to the judgment in R. Venugopala Naidu and Others Vs. Venkatarayulu Naidu Charities and Others, .

26. In the rejoinder, Mr. O. P. Khaitan, counsel for the plaintiff, reiterated that there was a concluded contract between the parties and the injunction order should be confirmed, otherwise irreparable harm and injury would be caused to the plaintiff. The offer vide letter dated 15.4.1998 was clearly accepted by the defendants vide letter dated 24.4.1998 and thereafter again a letter dated 26.5.1998 was sent by the plaintiff to the defendants. All terms and conditions were agreed between the parties and a concluded contract came into existence

 

and thereafter only a formal agreement remained to be executed.

27. He submitted that 10% amount was to be paid at the time of signing the agreement and balance 90% at the time of execution of the conveyance in favor of the plaintiff. The plaintiff has always been ready and willing to pay these amounts. As a matter of fact, the money was lying idle with the plaintiff as was indicated in the letter dated 26.5.1998. Mr. Khaitan also submitted that at the time of executing the conveyance or within three months after the agreement is signed means one and the same thing. After 37(1) form of I.T. Act is submitted it takes two months statutory period before the sanction is accorded and sometime is required thereafter for the execution of the conveyance deed. In these circumstances, three months time was specified. Therefore, according to the plaintiff three months after the agreement is signed or signing at the time of conveyance deed means one and the same thing.

28. Mr. Khaitan submitted that the plaintiff''s nominees were 100% subsidiaries of the plaintiff. He also submitted that vide resolution dated 22.4.1997 the trustees authorised Mr. Robby Tulus and Mr. G.I. Vishwanath to take necessary steps to sell the "Bonow House" which is owned by the trust. Therefore, the defendants wrongly submitted that no one was authorised by the trust to take steps for the sale of the aforesaid house.

29. Mr. Khaitan referred to the letter dated 26.5.1998 sent by the plaintiff to the defendant trust. All terms of the defendants were agreed and a concluded contract came into existence between the parties. The letter dated 26.5.1998 reads as under:-

J. K. Industries Ltd.,

3, Bahadurshah Zafar Marg,

New Delhi-110002.

26.5.1998

M/s. International Co-op. Alliance

Domus Trust,

Bonow House,

43, Friends Colony (East),

New Delhi 110065

Kind Attn.: Mr. Robby Tulus/Mr. Guo Yong Kang

Dear Sirs,

This has reference to your letter of 24th April, 1998 confirming sale of the above property to us.

 

At the meeting with you and your Counsel Mr. V.P. Singh on 16th May 1998 in the Office of our Solicitors O.P. Khaitan & Co., we have discussed in detail the draft Agreement for Sale and the same was finalised. The resolution of the Trust shown to our Solicitors was not satisfactory and the draft of the proper resolution was handed over to you which was also approved by your Counsel. We now await copy of the resolution of the Trust which, though already passed, has to be again passed in a proper form. We request you to complete the formalities and execute the Agreement as soon as possible since the amount of earnest money to be paid to you on signing the Agreement for Sale is lying idle with us.

Looking forward to hear from you soonest.

Thanking You,

Yours faithfully,

for J.K. INDUSTRIES LIMITED

Sd/-

D.C. JAIN"

30. In view of the aforesaid letter the negotiations between the parties were concluded and all terms and conditions of the contract were finally agreed between the parties and a concluded contract came into existence between the parties and nothing really remained except to execute the formal document. The plaintiff agreed to purchase the land on "as is where is basis" including 360 sq. yd. of excess land for which notification was issued but not actually acquired. By the conduct of parties a concluded contract came into existence and nothing remained after the aforesaid letter of 26.5.1998 except execution of the formal documents between the parties.

31. On consideration of the totality of the circumstances of the case prima facie, I am of the considered opinion that the prima facie case is in the favor of the plaintiff and the balance of convenience is also clearly in favor of the plaintiff. Consequently, the ad interim ex parte injunction is liable to the confirmed during the pendency of the suit. The injunction application filed by the plaintiff is allowed and disposed of. The defendants application under Order 39, Rule 4 CPC is accordingly dismissed. The parties are directed to bear their own costs.

32. The parties would be at liberty to file additional documents within 4 weeks, and the suit be listed for admission/denial of documents before the Joint Register on 21.7.1999. The Joint Registrar is directed to place the matter before the Court for framing of Issues immediately after the admission/denial of documents is concluded.

 