(2006) 04 MAD CK 0018

In the Madras High Court

Case No : O.S.A. No. 1 of 2005 and C.M.P. No''s. 144 of 2005 and 419, 420 and 3329 of 2006

Marg Constructions Limited APPELLANT

Vs

South India Corporation (Agencies) Limited and Others RESPONDENT

Date of Decision : 26-04-2006

Acts Referred:
Transfer of Property Act, 1882 — Section 52

Citation : (2006) 04 MAD CK 0018

Hon'ble Judges : A.P. Shah, C.J;Prabha Sridevan, J

Bench : Division Bench

Advocate : Mukul Rohatgi, for the Appellant; Vinod Bobde, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Shah, C.J.—This Letters Patent Appeal calls in question the judgment and order dated 27.12.2004 of the learned single Judge in

Application No. 841 of 2004 in C.S. No. 811 of 2004 and arises under the following circumstances.

2. The appellant, which is the plaintiff in the suit, is a company incorporated under the provisions of the Indian Companies Act. The first

respondent, which is the first defendant in the suit, is also a company incorporated under the Indian Companies Act. The second respondent is the

Managing Director of the first respondent. The first respondent is the owner of the property mentioned in Schedule A to the plaint. The first

respondent has entered into agreements of sale with various owners of schedule B schedule and has obtained powers of attorney from them. It is

the case of the appellant that the first respondent is heavily indebted and to discharge the dues to the third respondent/State Bank of India, Commercial Branch, Chennai, decided to sell Schedule A and B properties together as it constituted one block. On coming to know that the first

respondent was interested in completing the bargain the appellant approached the first respondent on 27th July 2004 and negotiated for the

purchase of both A and B Schedule properties and terms of an agreement of sale were mutually agreed upon by both the parties. The terms that

were agreed upon during the discussion held at the office of the first respondent on 27th July 2004 were that the appellant had to pay sale

consideration at the rate of Rs. 19 lakhs per acre for the A and B Schedule properties measuring totally 46.915 acres; that the first respondent had

to obtain the necessary no-objection certificate from the third respondent/ State Bank of India and get release of the documents of title with

respect to Schedule A property; that the appellant should complete the sale within three months from the date of receipt of No Objection

Certificate from the State Bank of India with respect to Schedule A property. It is the further case of the appellant that the second respondent

representing the first respondent as the Managing Director also forwarded a draft agreement through his E-mail to the plaintiff on 28th July 2004

containing essential terms of the contract as agreed to on 27th July 2004. However, as some doubts were raised about the Schedule B property a

further meeting between the parties was held on 2nd August 2004 and it was then agreed and finalised that the rate per acre of Rs. 19 lakhs will

stand unaltered but the first respondent shall obtain No Objection Certificate from the third respondent for purchase of both Schedule A and B

properties. The signing of formal agreement of sale was not necessitated as the parties agreed to complete the sale on receipt of No Objection

Certificate from the third respondent. It is the further case of the appellant that on the request of the respondents the appellant agreed to keep the

sale advance of Rs. 200 lakhs in a Non lien-Fixed Deposit account with the fourth respondent i.e., State Bank of India, Bazullah Road Branch.

The original FDRs were agreed to be in the custody of Advocate Mr. P.B. Ramanujam till the No Objection Certificate is issued by the third

respondent. In pursuance of the agreement reached between the parties, the appellant sent a cheque of Rs. 200 lakhs favouring the first respondent

to the fourth respondent for being kept in a No-Lien Fixed Deposit. The fourth respondent issued FDRs which were kept in the custody of

Advocate Mr. P.B.Ramanujam. The appellant specifically mentioned in their letter dated 3rd August 2004 to the first respondent that the said sum

of Rs. 200 lakhs was paid towards the purchase of schedule A and B properties for which No Objection Certificate was solicited and release of

title deeds requested. It is the further case of the appellant that the appellant has thus performed its part of the contract and is ready and willing to

pay the balance price and take the sale deed within three months from the date of the first respondent obtaining No Objection Certificate from the

third respondent as agreed for both Schedule A and B properties. But even after a lapse of more than two months, the respondents 1 and 2 had

not evinced any interest to obtain any No Objection Certificate from the third respondent. The appellant by their letter dated 2nd September 2004

brought to the notice of the respondents 1 and 2 that they are ready and willing to complete the sale of the property, but in vain. The respondents 1

and 2 have not responded at all and are attempting to sell A and B Schedule properties to some other party for a higher consideration. The

appellant, therefore, filed C.S. No. 811 of 2004 for specific performance of the contract of sale entered into between the parties on 27th July

2004 and 2nd August 2004 for A and B Schedule properties.

3. Along with the suit, the appellant took out O.A. No. 841 of 2004 seeking an order of interim injunction restraining respondents 1 and 2 from in

any way alienating or encumbering the A and B Schedule properties, pending disposal of the suit. On 13th October 2004 an exparte injunction

came to be issued. Pursuant to the notice, the first and second respondents appeared and filed their counter affidavits.

4. The respondents denied the allegation that negotiations were made and the terms were finalised on 27th July 2004 and the same were embodied

in a draft agreement to sell, prepared by the first and second respondents and forwarded the same to the appellant on 28th July 2004. It was

contended that no negotiations were made on 27th July 2004, and no terms were finalised as alleged and since the appellant wanted a draft

agreement the same was given to them, the terms of which were not to be taken as having been accepted by respondents 1 and 2. It was

contended that there was no agreement between respondents 1 and 2 and the appellant with regard to the sale of the properties described in

Schedule A and B. The parties never agreed for such sale. There was no concluded contract between the parties, oral or otherwise. At no point of

time, the first respondent had asked the appellant to pay any advance. Since there was no concluded contract, the question of the second

respondent asking the appellan t to pay any advance did not arise and there was no such request or demand by the second respondent. The

appellant on its own, as if to show its bona fides, volunteered to deposit a sum of Rs. 200 lakhs in the State Bank of India and requested the

second respondent to keep the amount pending finalisation of the terms and as there was no firm agreement reached between the parties, the

second respondent vide letter dated 10th August 2004 released the FDRs for Rs. 2 crores to Advocate Mr. P.B.Ramanujam clearly setting out

that if the respondents get into a formal understanding with the appellant, both of them will approach him and inform him of the methodology for

handing over FDRs. It was contended that the letter dated 03rd August 2004 referred to in the plaint was not received by respondents 1 and 2

and the document which is enclosed along with the plaint was not delivered to the respondents. It was contended that the property comprised in

both A and B Schedule properties are much more valuable than the paltry sum of Rs. 19 lakhs per acre which the appellant was offering and the

respondents were not inclined to accept the offer of Rs. 19 lakhs per acre and never accepted to the offer at any point of time. In fact on 18th

August 2004 the appellant had set out certain terms and conditions as their offer in which the appellant had quoted a price of Rs. 21 lakhs per

acre, and requested the second respondent to sign the duplicate and return the same to them as token of confirmation of the terms which were

offered by the appellant. Since the second respondent was not interested in having the transaction on the said terms and it was not acceptable to

them, the second respondent did not sign and return the duplicate. It was contended that the appellant has suppressed the letter dated 18th August

20 04 and has thus approached the Court with unclean hands. It was contended that if the injunction, which was granted by this Court, is not

vacated, great prejudice and irreparable loss would be caused to the respondents, as the first respondent company would be deprived of its right

to deal with the properties and get the best price for the same

5. The case put up before the learned single Judge on behalf of the appellant was that though no agreement was formally signed between the

parties, yet the contemporaneous correspondence exchanged between them shows that a binding contract did come into existence between the

parties on 27th July 2004 and 02nd August 2004. On the other hand, according to respondents 1 and 2, no concluded contract had been reached

between the parties and the correspondence exchanged between the parties also shows that there was no enforceable contract between them as

the essential conditions of the contract and bargain were never agreed upon by the parties.

6. Upon hearing the learned Counsel and considering the materials placed on record, the learned single Judge vacated the temporary injunction on

the following reasonings:-

Learned counsel appearing for the first defendant very seriously disputed as to the existence of contract much less a oral contract that too in

respect of a property the value of which, if not its entirety atleast the part of its is admitted to be more than Rs. Two crores by the applicant

themselves and further contend ed that the act of the applicant is only to bring the defendant for some settlement or otherwise. As there is a strong

dispute as to the existence of the agreement, which is the basis for filing a suit for specific performance and the existence or otherwise of the same

has to be decided only at the time of trial, I am of the considered view taking into consideration of the settled legal principle that the grant of

specific performance is discretionary in nature, the balance of convenience lies more with the real owner the first defendant, the injunction granted

on 13.10.2004 would cause hardship to the real owner and further more whatever transaction takes place during the pendency of the suit would

be protected u/s 52 of the Transfer of Property Act, the stay granted on 13.10.2004 is vacated by observing that any encumbrance or alienation

made during the pendency of the suit would depend upon the outcome of the suit.

7. We have heard the learned senior counsel appearing for the parties, and have perused the records.

8. The short question that falls for our consideration is whether the appellant has prima facie established that there was a valid and subsisting

agreement between the parties?

9. Mr. Mukul Rohatgi, learned senior counsel appearing for the appellant submitted that the essential terms of the agreement were reached

between the parties in the meetings held on 27th July 2004 and 02nd August 2004 and at the request of the respondents, the appellant had

deposited a sum of Rs. 200 lakhs in No-Lien Fixed Deposit with the fourth respondent/bank. He submitted that even though agreement had not

been signed by the parties, but they acted upon it treating it to be a binding contract. He argued that the signing of the formal agreement was not

necessary as the parties had agreed to complete the sale on receipt of No Objection Certificate from the third respondent and pursuant to the

same, a sum of Rs. 200 lakhs was deposited with the third respondent/bank in furtherance of the agreement reached between the parties. On this

basis, Mr. Rohatgi submitted that a binding agreement had come into existence, through correspondence and non signing of the formal agreement

by the parties was of no consequence. In reply, Mr. Vinod Bobde, learned senior counsel appearing for the respondents submitted that even a

bare perusal of the correspondence exchanged between the parties would show that there was no meeting of mind between the parties and no

agreement can also be spelt out from the correspondence exchanged between the parties. Learned senior counsel submitted that the documents on

record especially the letters dated 18th August 2004 and 21st August 2004 clearly show that at no point of time a concluded contract was

reached between the parties, and the FDRs were duly discharged by the respondents vide letter dated 10th August 2 004.

10. It is an admitted fact that the first respondent is the owner of A Schedule property and has entered into agreements of sale with various owners

of B Schedule property and has obtained powers of attorney from them, and intended to sell both the properties as one block. It is also not in

dispute that the appellant represented by their Managing Director Mr. G.R.K.Reddy, approached the second respondent on 27 th July 2004 and

negotiated for the purchase of both A andB Schedule properties. According to the appellant, the essential terms of the agreement were reached

between the parties in the meetings held on 2 7th July2004 and 2nd August 2004, and pursuant to the agreement, the appellant had deposited a sum of Rs. 200 lakhs in No-Lien Fixed Deposit with the fourth respondent bank. At this stage, it would be relevant to refer to the letter of the

appellant addressed to the second respondent dated 18th August 2004, which reads as follows:-

The South India Corporation Ltd., (SICAL) No. 73, Armenian Street, Chennai - 600 001.

Kind Attn: Mr. S.Vasudevan

Dear Sirs,

Sub: Sale of your lands at Sholinganallur village.

This is to confirm the conversation we had in respect of sale of your lands situated at Sholinganallur Village. The broad understanding we have

reached are as follows: -

1) SICAL who are the absolute owners of the lands in extent 47 acres and 5 cents comprised in Survey Nos. 429/4, 436/3, 437/1, 438/1, 530/2

B, 534/2, 535/1, 535/1B, 536/2, 539/1, 540/1A, 540/1C, 540/2A, 540/2 B, 540/2, 540/4A, 541/4B, 561/1A, 561/2A, 561/2B, 561/3A1,

562/1, 562/2, 562/3, 562/4, 562/5B, 562/8, 563/1A, 563/1B, 563/2, 564/1A, 563/1 B, 563/2, 564/1A, 563/1B, 563/2, 564/1A, 563/1B,

565/2, 566/4B, 568/13 , 568/5, 568/7, 5701/1 of Sholinganallur Village having good and marketable title, will convey the same to us or our

nominees.

2) The total consideration for the transaction will be Rs. 9,97,50,000/- (Rupees nine crores and ninety seven lakhs and fifty thousand only)

3) SICAL will fulfil all the statutory requirements like passing Board Resolution, etc.

4) As suggested by SICAl, a sum of Rs. 2,00,00,000 (Rupees two crores) has been deposited with the State Bank of India, Bazulla Road

Branch, Chennai ? 600 017 and the receipts handed over to Mr. P.B.Ramanujam to be kept by him or trust.

5) The stamp and registration charges shall be borne by us/our nominees.

6) Clearance from Bank and other papers necessary are agreed to be produced within a month from this date. Kindly confirm your acceptance by

signing the office copy of this communication.

Yours sincerely,

G.R.K.Reddy, Managing Director

11. A bare reading of the above letter shows that there was no meeting of mind between the parties as to the essential terms and conditions of the

contract, and the case of the appellant that the agreement was reached between the parties in the meetings held on 27th July 2004 and 2nd August

2004 is completely untrue. In fact, by this letter the appellant had increased the offer of Rs. 9,97,50,000/- computed at the rate of Rs. 21 lakhs per

acre. The letter dated 21st August 2004 addressed by the appellant further confirms the fact that there was no concluded contract between the

parties. In this letter, the appellant inter alia stated: -

This has reference to the discussions we had with you in regard to the sale of the above property. We confirm our agreement for purchase of the

same as detailed hereunder: -

1. The total consideration will be Rs. 2,70,00,000/- (Rupees two crores and seventy lakhs only)

2. As required by you, we are enclosing our cheque No. 186312 dated 20.08.2004 for Rs. 1,00,00,000/- (Rupees one crore only) drawn on

Punjab National Bank, Purasawalkam Branch and Cheque No. 638838 dated 30.08.2 004 for Rs. 1,00,00,000/- (Rupees one crore only) drawn

on Indian Overseas Bank, Purasawalkam Branch, Chennai as advance consideration for the above sale.

3. The balance consideration of Rs. 70,00,000/- (Rupees seventy lakhs only) will be paid within 7 days from the date of obtaining vacant

possession by SICAL from John Crane. The likely date of obtaining vacant possession by SICAL is 31st August 2004.

4. SICAL shall hand over the original title deeds upon payment of the entire consideration and complete the registration formalities.

5. Stamp and Registration charges shall be borne by us/our nominees.

6. SICAL confirms that the above property is unencumbered and has a marketable title to the property.

Kindly confirm your acceptance by signing the duplicate copy of this letter.

12. The letter of the even date addressed by the second respondent to Mr. P.B.Ramanujam, Advocate, also shows that the parties were still

negotiating the terms and they had not actually reached an agreement on all material terms of contract of sale. By the said letter, the 2 nd respondent acknowledged the appellants offer of Rs. 9,97,50,000/- computed at Rs. 21 lakhs per acre and stated as follows: -

SICAL is willing to enter into any firm agreement for the sale of the property with such persons, including Mr. G.R.K.Reddy, provided the

condition above with reference to the payment of consideration is adhered to. If Mr. G.R.K.Reddy were to purchase the property, we are willing

to adjust the face value of the FDR of Rs. 2 crores and receive the balance consideration of Rs. 7,97,50,000/-.

Upon receiving the full consideration, SICAL would be willing to meet with all other requirements of the purchaser, except the following:-

a. Obtaining clearances/NOC from Tamil Nadu Housing Board.

b. Obtaining the re-classification of the property to residential/ commercial zone from its present classification of open space recreation zone from

CMDA.

c. Facilitating purchase of the pockets of lands which would make the present holding contiguous.

d. Eviction of the encroachers from the eari poramboke which is on the front side of the property.

e. Steps for widening the access road of the property, including getting clearances for the same from the concerned statutory authorities. We would

be willing to submit photo copies of the title deeds of the property to you or to any advocate of your choice for scrutiny to satisfy yourself that our

title to the property referred herein is clear and marketable.

13. On going through the entire material placed on record we are satisfied that no mutually binding contract had come into existence between the

parties through correspondence. There was no concluded contract between the parties on 27thJuly 2004 and 02nd August 2004 as alleged by the

appellant. In fact by letter dated 18th August 2004 the appellant had offered enhanced consideration of Rs. 9,97,50,000/- computed at the rate of

Rs. 21 lakhs per acre. The appellant has deliberately suppressed this letter, which conclusively shows that there was no agreement between the

parties about the price even as on 18th August 2004. The parties, thus, for all intended purposes were still negotiating the terms of the contract and

at no point of time did the respondents accept the terms offered by the appellant.

14. It is true that an agreement, even if not signed by the parties, can be spelt

out from correspondence exchanged between the parties. The

question, however, is can any agreement be spelt out from the correspondence between the parties in the instant case?

15. In M/s. Rickmers Verwaltung GMB H Vs. The Indian Oil Corporation Ltd., , the Supreme Court while considering a similar issue observed:-

In this connection the cardinal principle to remember is that it is the duty of the Court to construe correspondence with a view to arrive at a

conclusion whether there was any meeting of mind between the parties, which could create a binding contract between them but the court is not

empowered to create a contract for the parties by going outside the clear language used in the correspondence, except insofar as there are some

appropriate implications of law to be drawn. Unless from the correspondence, it can unequivocally and clearly emerge that the parties were ad

idem to the terms, it cannot be said that an agreement had come into existence between them through correspondence. The Court is required to

review what the parties wrote and how they acted and from that material to infer whether the intention as expressed in the correspondence was to

bring into existence a mutually binding contract. The intention of the parties is to be gathered only from the expressions used in the correspondence

and the meaning it conveys and in case it shows that there had been meeting of mind between the parties and they had actually reached an

agreement upon all material terms, then and then alone can it be said that a binding contract was capable of being spelt out from the

correspondence.

16. The question is whether in the facts and circumstance of the case, it can be unequivocally and clearly said that the parties were ad idem to the

terms. On a very careful perusal of the entire correspondence on record, we are of the view that no concluded bargain had been reached between

the parties and at no point of time, the terms and conditions of the contract were accepted by the respondents. The correspondence exchanged

between the parties shows that there is nothing expressly agreed between the parties and no concluded enforceable and binding agreement came

into existence between them. As observed by the Supreme Court there is a vast difference between negotiating a bargain and entering into a

binding contract. After negotiation of bargain in the present case, the stage never reached when the negotiations were completed giving rise to a

binding contract. The learned single Judge was, therefore, perfectly justified in vacating the injunction, inasmuch as no concluded and binding

contract ever came into existence between the parties. We find no merit in the appeal. It fails and is dismissed with costs. Consequently, C.M.Ps

are closed.

On the request of the learned senior counsel appearing for the appellant, the ad-interim relief is continued for a period of four weeks.