
(2018) 05 DEL CK 0389
In the Delhi High Court
Case No : RFA No. 462 OF 2018

MOHD. UMAR

APPELLANT

Vs

MOHD. RASHID NOOR

RESPONDENT

Date of Decision : 28-05-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 96

Citation : (2018) 05 DEL CK 0389

Hon'ble Judges : VALMIKI J. MEHTA

Bench : Single Bench

Advocate : Alamgir

Final Decision : Dismissed

Judgement

C.M. Appl. No. 22757/2018 (for exemption)

1. Exemption allowed, subject to all just exceptions. CM stands disposed of. C.M. Appl. No. 22755/2018(for condonation of delay in filing)

2. For the reasons stated in the application, delay of 30 days in filing of the appeal is condoned, subject to just exceptions. CM stands disposed of.

RFA 462/2018 & C.M. Appl. No. 22756/2018(for stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of

the Trial Court dated 5.1.2018 by which the Trial Court has dismissed the suit for declaration, possession, recovery of Rs.2,75,000/- with interest

against the respondent/defendant.

4. The facts of the case are that the appellant/plaintiff pleaded that the respondent/defendant was the owner of the property at A-93. Abul Fazal

Enclave, Part-II, Shaheen Bagh, Delhi and between the parties a collaboration

agreement was entered into on 20.3.2006. In terms of the collaboration agreement, the appellant/plaintiff was to make construction of the property and whereas the left hand side portion of the constructed 100 sq. yards

was to fall to the share of the respondent/defendant, the right hand side portion was to the share of the appellant/plaintiff.

5. The appellant/plaintiff by the subject suit claimed that accordingly this right hand side portion of constructed 100 sq. yards be given to the

appellant/plaintiff, as the respondent/defendant did not give this entire portion but only gave this portion minus the ground floor portion and terrace

rights. Therefore it is only this ground floor and terrace rights which are the subject matter of the present suit filed by the appellant/plaintiff against the respondent/defendant.

6. The respondent/defendant prayed for dismissal of the suit on the ground that the appellant/plaintiff had delayed the construction and had raised bad

quality construction. It was pleaded that appellant/plaintiff, in terms of the documentation dated 28.12.2007, had given up the rights in the suit portion,

i.e of the ground floor and terrace rights of the right hand side portion of the property, and therefore, the appellant/plaintiff cannot claim the reliefs in the subject suit.

7. The only issue which is called upon for decision by this Court is the effect of the documentation dated 28.12.2007 executed between the parties and

which are the Agreement, General Power of Attorney, Affidavit and Will. The trial court has held that in terms of the relevant clause of this

agreement, the appellant/plaintiff had given up his rights with respect to the ground floor portion and terrace rights as the appellant/plaintiff had not

completed the project on time, resulting in the rights in the suit portion being waived off by the appellant/plaintiff in favour of the respondent/defendant.

The relevant clause of the agreement in this regard has been reproduced by the trial court in para 10 of the impugned judgment and this para reads as

under:-

â??10. It is specifically argued that as per the said contract/agreement, the plaintiff waived off his right over the ground floor and terrace of the right

side portion of the building. The said clause is re-produced as under:- â??And whereas the first party and the second party have entered in a

Collaboration Agreement on 20.03.2006, to construct the apartments at plot

no.A-93, of Khasra no. 326, situated at Abul Fazal Enclave Part-II

(Shaheen Bagh), Jamia Nagar, Okhla, New Delhi-25, by the name N.R.I. Apartments. The first is the owner of the plot approx.200 sq.yds. and the

second party has invested entire investment of construction building material, labour charges and accidental charges in lieu of that investment entire

investment of construction building material, labour charges and accidental charges in lieu of that investment the second party has agreed to take these

three flats against that investment which is taken as sale consideration for these three flats. The second party has not completed the project as

specified time as per agreement for that reason had has left his half share of flat on the ground floor and the terrace of the third floor of the right wind

side of the building as full and final settlement of first and second party. The second party will never claim for anything other than the settlementâ?.

(underlining added)

8. Though learned counsel for the appellant/plaintiff argued that the subject documents were got executed by respondent/defendant from the

appellant/plaintiff under threat, duress and misrepresentation as pleaded in the replication, however it is seen that this stand of the appellant/plaintiff is

misconceived for two reasons and is therefore to be rejected.

9.(i) The first reason is that if really there was any so-called threat or duress or misrepresentation by the respondent/defendant to the

appellant/plaintiff, and who is a builder, for execution of the documents dated 28.12.2007, then there was no reason why for the period from

28.12.2007 till the appellant/plaintiff filed the subject suit on 28.7.2008 the appellant/plaintiff did not sent a legal notice to the respondent/defendant with

respect to alleged illegality of the documentation dated 28.12.2007 on account of the same having been executed under the threat, duress and

misrepresentation of the respondent/defendant. Also no complaint to the police or any other authority has been filed by the appellant/plaintiff alleging

illegality and invalidity of the documents dated 28.12.2007 on the ground of the same having been got signed from the appellant/plaintiff by the

respondent/defendant on the basis of threat, duress and misrepresentation.

(ii) The second reason is that though the appellant/plaintiff took up this case in the replication, however in the affidavit by way of evidence filed by the

appellant/plaintiff, there is no deposition that the documentation dated

28.12.2007 were got executed on account of threat, duress and misrepresentation. The only averments which have been made by the appellant/plaintiff in his affidavit by way of evidence are those in para 6 of the affidavit by way of evidence, and I do not find in this para that the same avers, much less proves, any threat or duress or misrepresentation by the respondent/defendant against the appellant/plaintiff. This para 6 reads as under:- ¶6. The sole intention of the defendant was to pressurize the innocent deponent and constrained him to accept his dictates whereby he has been depriving the deponent from his half constructed portion on the ground floor right hand side wing as well as on the terrace right side on the top of the floor i.e. 3rd floor as shown in red colour in site plan. Not only this, he has also pressurized the deponent to undertake/carry on repairs of his portion for a period of one year at the cost of deponent illegally & dishonestly. He has further refused to pay for the extra work carried out by the deponent at the desire of defendant in his left side costing Rs.2,75,000/- (Rupees Two Lakhs Seventy Five Thousand only).¶¶

10. In view of the aforesaid discussion, I do not find any merit in the appeal in view of the appellant/plaintiff having been given up his rights in the suit portions of the ground floor and terrace rights in terms of the documentation dated 28.12.2007. The appeal along with the application is dismissed.