

(1991) 04 DEL CK 0083

In the Delhi High Court

Case No : I.A. No. 231 of 1988 in Suit No. 1912 of 1985

M/s. Allahabad Law Journal Co. Ltd

APPELLANT

Vs

M/s. Skyways Construction Corporation and others

RESPONDENT

Date of Decision : 29-04-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Limitation (Amendment) Act, 1972 — Article 52

Citation : AIR 1992 Delhi 9

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : J.P. Gupta, for the Appellant; H.S. Narula, for the Respondent

Judgement

1. This is an application seeking amendment of the plaint with a view to seek further relief of specific performance of agreement for sale.

2. The application is opposed by defendants 1 to 3. Defendants No. 4 has been already proceeded ex parte in the main suit.

3. The facts in brief are that plaintiff had entered into an agreement dated December 15, 1970 with defendant No. 1 through defendant No. 2 for the purchase of Flat No. 5A in Rajhans, 33, Prithvi Raj Road, New Delhi for consideration of Rs, 1,60,000 / -. The building was yet to be constructed and the sum of Rs. 5,000 / - was paid at the time of the signing of the agreement and balance amount was to be paid in 10 equal installments.

4. plaintiff, later on, had entered into an agreement with defendant No. 4 for selling its rights under the Agreement for sale in favor of defendant No. 4 for sale consideration of Rs. 2 lacs. This agreement was executed on November 22, 1972. It is the case of the plaintiff that Rs.50,000/- still remain to be paid by defendant No. 4 to the plaintiff under the aforesaid agreement and defendant No. 4 was to pay the balance amount of Rupees 18,000 /- due to defendant No. 1 from plaintiff under the Agreement for Sale at the time of taking the possession

of the flat. It is averred by the plaintiff that defendant No. 1 was duly apprised of the contract made between the plaintiff and defendant No. 4 and it was made clear to defendant No. 1 that defendant No. 1 was not to deliver the possession of the flat to defendant No. 4 unless and until plaintiff was to give a certificate after receiving Rs. 50,000 from defendant No.4. It is alleged that plaintiff had paid Rs. 1,10,000/- to defendant No. 1 by way of Installments as enumerated in para 6 of the plaint. It is pleaded that the plaintiff had been making enquiries from defendant No. 1 regarding the stage of completion of" the building in question but plaintiff did not get any satisfactory information and later on plaintiff had come to know that defendant No. 1 had transferred possession of the flat in question to defendant No. 4 without intimating the plaintiff and without obtaining any certificate from the plaintiff in this regard. So, it is averred that the plaintiff continues to be the owner of the flat in question and thus is entitled to have possession of the said flat. The plaintiff in the suit had sought relief of possession of the flat and in the alternative a decree for recovery of Rs. 50,000/- with interest @ 24% per annum against defendant No. 4.

5. The defendant No. 3 had filed the written statement pleading that defendant No. 3 had no concern whatsoever with the agreements in question. Defendants Nos. 1 and 2 had pleaded in the written statement that suit is barred by limitation and moreover the contract with the plaintiff stood rescinded and there was no agreement with defendant No. 1 to obtain any clearance from the plaintiff for delivering possession of the flat to defendant No. 4.

6. The plaintiff has now prayed that plaintiff may be permitted to pray for additional relief of specific performance of Agreement for Sale which flows from the facts enumerated already in the plaint.

7. The counsel for defendants 1 to 3 has argued that the relief sought by way of amendment of the plaint stands time barred in view of Art. 54 of the Limitation Act. It is no necessary to express any view with regard to such a relief being time barred by limitation at this stage because the additional relief is being sought on the same facts as stand pleaded in the original plaint. The plea has been already taken by the defendants 1 to 3 that the suit itself is barred by limitation.

8. In my view, the plaintiff can be permitted to pray for the additional relief flowing from the same cause of action and facts mentioned in the plaint even at this stage as the same is not going to cause any hardship or injustice to the defendants but I make it clear that said amendment of plaint would be subject to the plea of the defendants that relief regarding specific performance of agreement for sale stands barred by limitation. This question will be decided at the final stage of the suit. The plaintiff has moved this application belatedly, so plaintiff must pay cost for seeking this amendment.

9. I allow this application subject to payment of Rs. 2,000/- as costs. The costs be paid within 2 weeks.

10. Petition allowed.