

(1996) 01 DEL CK 0032

In the Delhi High Court

Case No : I.A. 2667 of 1990 in S.No. 1593 of 1989

M/s. Om Builders Pvt. Ltd.

APPELLANT

Vs

M/s. Edward Keventer (Successors) Pvt. Ltd. and others

RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:

Citation : AIR 1996 Delhi 330

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : Vinay Bhasin and H.L. Raina, for the Appellant; Rajiv Sawhney, Sanjiv Anand, Ms. Kajal Chandra and D. Moitra, for the Respondent

Judgement

1. In the suit for permanent injunction, seeking to restrain the defendants from selling or otherwise transferring Plot No. 48, admeasuring 25 acres of land situated at Kaventras Land, Sardar Patel Marg, Chanakya Puri, New Delhi (hereinafter referred to as "the suit property") without first offering the same to the plaintiff, defendant No. 2, by this IA, under Order 7, Rule 11, CPC prays for rejection of the plaint stating that the plaintiff has alleged that the defendants had entered into an oral agreement with the plaintiff to sell the suit property to the plaintiff for a sum of Rs. 24.50 crores, further alleging that in terms of the said oral agreement and the subsequent discussion, the defendants had unequivocally and unconditionally undertaken an obligation to give the plaintiff the first option to purchase the suit property and that the plaintiff alleged to have acquired a legal right to enforce the agreement and also negative covenant regarding the said first option, further alleging that the plaintiff is ready and willing to perform his part of the agreement and the defendants are not performing their part of the agreement and that the defendants will sell or otherwise transfer the suit property in breach of the agreement with the plaintiff and contended that the present suit is not maintainable at law; that the suit and the entire documents on record filed by the plaintiff, which form the basis of the alleged claim in respect of the alleged contract, do not represent a concluded

contract, that there merely existed an agreement to enter into an agreement between the plaintiff and the defendants, which is legally not enforceable; that by the said suit, the plaintiff is purporting inter alias to seek specific performance of the alleged oral agreement for sale of immovable property which is legally not maintainable in law; that the suit is liable to be rejected inasmuch as the same is barred by law; that by virtue of the provisions of Chapter XX-C of Income Tax Act, 1961, all agreements, claims for transfer of immovable property, when the value of such property exceeds Rs. 10.00 lakhs, are compulsorily required to be reduced in writing and registered before the authorities; that all agreements exceeding on the date of the coming into force of the said provisions, viz. 1-10-1986, are also compulsorily required to be registered with the Income Tax Authorities within the stipulated period, that the alleged agreement, referred to by the plaintiff, has not been reduced into writing, nor has the same been registered/ filed before the Income Tax Authorities as per law; that assuming that there was an agreement of first option, defendants gave the first option to the plaintiff by sending Telex dated 18-9-1986 and in the reply thereto, the plaintiff gave a conditional offer which was never accepted by the defendants; that the first option without agreement on material terms like price, time and alike, is not enforceable in law; that the agreement of option relied upon by the plaintiff, at best amounts to an agreement to negotiate or an agreement to enter into a contract which are both not enforceable in law.

2. For the purpose of attracting Order 7, Rule 11, CPC, it has to be seen whether the plaint discloses cause of action or not? In plaint para 4, it has been averred that".....Shri Om Prakash Navani, Director of the plaintiff met the defendants 1 and 2 at Delhi on or about 2nd week of June, 1986. Talks were initiated by defendants Nos. 1 and 2 through defendant No. 3. The plaintiff offered Rs. 24.50 crores which was accepted by Defendants Nos. 1 and 2. It was agreed that a formal agreement would be entered into between the parties shortly..... As far as the plaintiff was concerned, the price being settled the rest was a mere formality." In para 5, it is averred that "..... Defendant No. 2 stated that he was a man of his word and in any case, he was willing to make a further commitment on behalf of defendant No. 1 that the plaintiff shall be given the first option to purchase the said land at Chanakyapuri, New Delhi belonging to Defendant No. 1 and that the Defendant No. 1 would never sell the property without giving first opportunity to the plaintiff The plaintiff also sent a letter dated 29-7-1986 to Defendant No. 2 requesting him to confirm the agreement and commitment made by the Defendants with regard to giving the first option to the plaintiff to purchase the said property." In plaint para 7 it is averred that "..... He (defendant No. 2) assured the plaintiff that he would stand by all commitments and promises to commit the option given to the plaintiff in writing. Accordingly the defendant No. 2 on behalf of defendant No. 1 wrote to the plaintiff, confirming and recording that the defendant No. 1 had given first option to the plaintiff for purchasing the said property. This confirmation letter is undated, however, the same was received by the plaintiff during the month of Sept. 1986,

and is written in response to the Plaintiff's letter dated 1-9-1986." In plaint para 8, it is averred that "..... They requested the plaintiff to confirm the plaintiffs offer (already accepted earlier) in the matter for their own internal purposes. Therefore, the plaintiff wrote a letter dated 19-9-1986 to Defendants 1 and 2 reiterating the offer of Rs. 24.50 crores for the said property..... The said letter, in no way, derogates from the valid concluded and binding contract made between the parties as aforesaid. "In para 11 it is averred that ".....It was agreed that the parties would enter into a formal agreement to sell and that necessary applications would be filed before the Income Tax Authorities as required by the Income Tax Act. It was agreed that the draft of the formal agreement would be sent by the defendant No. 1 to plaintiff shortly." In para 12, it is averred that"..... By the said writing Defendants Nos. 1 and 2 are bound not to sell the said property to any other person and to give first option to purchase said property to any other person other than the plaintiff." In plaint para 13, it is averred that "..... This will be in breach of the obligations expressly created in favor of the plaintiff by Defendants Nos. 1 and 2."

3. In substance, what is averred by the plaintiff in the plaint is that the defendants have entered into an oral agreement to sell the suit property to the plaintiff and that the defendants have unequivocally and unconditionally, undertaken and created an obligation in favor of the plaintiff to give the first option to purchase the suit property to the plaintiff.

4. It may be noted at the outset that in this suit, permission under Order 2, Rule 2, CPC was granted to the plaintiff with regard to the filing of the suit on the part of the cause of action accrued, viz., suit for specific performance of the oral agreement to sell the suit property, as the present suit has been filed only for the relief of injunction and not for the relief of specific performance of the alleged oral agreement to sell the suit property. It has been fairly stated at the bar by the counsel the plaintiff that even after obtaining permission under Order 2, Rule 2, CPC for part of the cause of action accrued, no suit for the specific performance of the agreement to sell has been filed by the plaintiff and that now, the suit for the relief of specific performance on the basis of the alleged oral agreement to sell, has become barred by limitation.

5. The principle that "a mere reference to a future formal contract in an oral agreement will not prevent a binding bargain between the parties and the fact that the parties refer to the preparation of an agreement by which the terms agreed upon are to be put in a more formal shape does not prevent the existence of a binding contract" laid down in the case of Kollipara Sriramulu Vs. T. Aswathanarayana and Others, , cannot be disputed. In this case the question is not the disclosure or otherwise of the cause of action for the suit on the alleged oral agreement to sell the suit property for Rs. 24.50 crores in June 1986 or not but whether there is cause of action for the suit on alleged first option to purchase the suit property by the plaintiff.

In the instant case, the plaintiff's say is that in the first meeting the plaintiff

offered Rs. 24.50 crores which defendants 1 and 2 accepted and it was agreed between the parties that a formal agreement would be entered into shortly and the price being settled, the rest was a mere formality. According to the plaintiff, the second meeting was held at Bombay in July, 1986 to discuss the formal terms and conditions to be incorporated and that this time, defendant No. 2 is alleged to have stated that formal drawing up of the agreement would take some time and that he also made a commitment of first option to purchase the suit land by the plaintiff. As it appears from the averments of the plaint, it may be noted that in the meeting of June 1986 price offered by the plaintiff was accepted by the defendants and that nothing remained further to be done by the plaintiff and the drawing up of the formal agreement was postponed to a later date. The second meeting in July 1986 in Bombay was for discussing the formal terms and conditions to be incorporated in written agreement and in that meeting defendant No. 2 is alleged to have undertaken an obligation to offer the suit land first to the plaintiff before selling the same to anybody else. A question would, Therefore, arise if there was an agreement to sell averred in plaint para 4, in the second week of June, 1986 for the consideration of Rs. 24.50 crores and only the formal agreement remained to be drawn up and when the parties had again met in Bombay in July, 1986 to discuss the formal terms and conditions to be incorporated in the written agreement, how defendant No. 2 undertaking an obligation to offer the suit land first to the plaintiff, before offering the same for sale to other person, in other words, first option to purchase the suit land to the plaintiff assuming it to be so as alleged would constitute a legal and binding contract so as to furnish a cause of action, as envisaged in law, to the plaintiff.

6. Thus is suggested from the averments of plaint paras 4 and 5, partly reproduced above, that formal terms and conditions were to be discussed and finalised for incorporating the same in the agreement to sell the suit property for Rs. 24.50 crores, and even assuming first option to the plaintiff, the terms and conditions were not finalised and accepted by both the parties in June/July 86 and taking the plaintiff's say at the best, all that could be said is that in June/July, 1986, plaintiff offered Rs. 24.50 crores which defendants accepted. As far as first option to purchase by the plaintiff in absence of any terms fixed, there was no binding bargain.

7. In the case of *T. Arivandandam Vs. T.V. Satyapal and Another*, it has been observed that "if on a meaningful --not formal -- reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the trial Court should exercise its power under O. 7, R. 11, C.P.C. taking care to see that the ground mentioned therein is full filled.....". Thus, what is required is that for the purpose of passing order under O.7, R. 11, CPC the reading of the plaint as to be meaningful-not formal -- and on such a reading if the plaint is manifestly vexatious and meritless, not disclosing a clear right to sue, the Court is required to reject the plaint under Order 7, Rule 11, CPC.

8. In the case of *State of Rajasthan and Others Vs. Swaika Properties and*

Another, , it has been observed in para 8 thereof that "the expression "cause of action" is tersely defined in Mulla's Code of Civil Procedure: "The "cause of action" means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court". In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff to prove in order to support his right to relief against the defendant....."Thus, by cause of action, what is meant is every fact averred in the plaint, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court and the cause of action is a bundle of facts, which has to be taken with the law applicable to them to give the plaintiff right to relief against the defendant. In the instant case, the defendant has denied the oral agreement to sell the property and has also denied his option given by the defendant to the plaintiff for the purchase of the suit property. Admittedly, there is no written agreement to sell as also alleged option in favor of the plaintiff to purchase the suit land by the defendants. The relief claimed in the plaint is not on the basis of the alleged oral agreement to sell, for which the plaintiff alleges to have offered Rs. 24.50 crores as the consideration averred in plaint para 4, but the relief claimed, looking to the relief worded, is on the basis of the option to purchase allegedly given by defendant No. 2 in July, 1986 at Bombay. In other words, the plaintiff has been indirectly seeking specific performance of oral agreement to sell, on the allegation of first option to purchase by the plaintiff. This alleged first option in favor of the plaintiff which is the basis of this suit, has been traversed by the defendants and the plaintiff would be required to substantiate the same and also show that the law applicable would entitle the plaintiff to the relief against the defendant. Taking the facts averred the bundle of facts -- with the law applicable, in my opinion , would not entitle the plaintiff to the relief for the reason that even taking the plaintiff's say at the best and assuming that defendant No. 2 gave such option to the plaintiff in July 1986, even then the same would be an offer given by the plaintiff which does not appear to have been accepted by the defendants culminating into a binding and concluded contract. Since it is not suggested from the averments of the plaint that there was any concluded agreement as regards the first option to purchase the suit property by the plaintiff on material terms, like the consideration, time for exercise of the so called option and the like, the same would not be enforceable at law. The agreement of option relied upon by the plaintiff, at the most would amount to an offer, which would be not enforceable at law. Appreciating the pleadings in the plaint for the present purpose, following the decisions of the Supreme Court (supra), the plaint would be liable to be rejected under Order 7, Rule 11, CPC for non-disclosure of cause of action so as to mean no-disclosure of bundle of facts, which taken with law applicable, would give the plaintiff a right to relief against the defendants when every fact traversed by the defendants would require the plaintiff to prove in order to support the right to the judgment of the Court.

9. It, Therefore, follows that the application u/O. 7, Rule 11, CPC deserves to be

granted and plaint rejected under Order 7, Rule 11, CPC for the reasons aforesaid.

10. In the result, I.A. succeeds and the plaint is rejected under Order 7, Rule 11, CPC. No costs.

11. Application allowed.