
(2013) 02 DEL CK 0167

In the Delhi High Court

Case No : FAO No. 512 of 2012 and C.M. No. 21371 of 2012

M/s. Shriji Tradex (P) Limited

APPELLANT

Vs

Smt. Alia @ Renu Kedia

RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

Citation : (2013) 5 AD 340 : (2013) 2 AD 689

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Singhal, for the Appellant; Shalini and Mr. Lalit Gandharva, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is an appeal filed by the Appellant against the order dated 15.10.2012 passed by the learned Additional District Judge 06, South, Saket, New Delhi in CS No. 95/2012 titled M/s. Shriji Tradex Pvt. Ltd. vs. Smt. Alia @ Renu Kedia by virtue of which the application of the Appellant under Order XXXIX Rule 1 & 2 CPC for ad-interim injunction was dismissed. Briefly stated the facts of the case are that M/s. Shriji Tradex Pvt. Ltd. a registered company through one Mr. Vinod Kedia, director of the said company and the respondent, Smt. Alia @ Renu Kedia is alleged to have entered into an agreement to sell in respect of the property bearing No. D-84, Freedom Fighters Colony, Neb Sarai, New Delhi (hereinafter referred to as "the suit property"). Plaintiff/appellant is alleged to have paid a sum of Rs. 10 lacs to the respondent. This agreement was entered into on 07.01.2009 and the respondent/defendant executed various documents like general power of attorney, Will, affidavit and receipt in token of having received a sum of Rs. 10 lacs by way of cheque. It was alleged in the plaint by the Appellant that subsequent thereto, the respondent became dishonest and filed a suit for permanent injunction against Vinod Kedia and also got an FIR No. 129/2010 registered u/s 418/420/468/471/506/34 IPC for cheating, forgery, using forged documents as genuine with police station Mehrauli. The respondent

also threatened to cancel the transaction and accordingly withdrew the power of attorney dated 07.01.2009 executed in favour of the Appellant. She also stated that she is planning to sell the property to a third party.

2. On the basis of these averments, a suit for specific relief and permanent injunction was filed. The Appellant also alleged that after cancellation of the sale transaction the respondent had issued a cheque of Rs. 11,80,000/- dated 02.07.2010 drawn on Bank of Baroda in token of having refunded the entire sale consideration alongwith interest which she is purported to have received so as to close the chapter.

3. The respondent filed her written statement and contested the claim. She took the plea that Vinod Kedia, the director of the Appellant company was married to her on 09.02.1992 and from the wedlock they were blessed with a female child on 19.08.1993. It was also stated by her that this was her second marriage and from her earlier marriage she had two sons. She claimed herself to be the owner of the said property and being an illiterate woman, the director of the Appellant company namely Vinod Kedia alongwith his agents Leela, Anil and Harish fraudulently got documents executed in the form of three general power of attorneys in favour of the aforesaid three persons which included the suit property also. She stated that as a consequence of this fraud having been played on her she had filed a suit for permanent injunction against Vinod Kedia and also got an FIR No. 129/2010 for offences of cheating and forgery etc. registered against him and other persons at police station, Mehrauli. She denied that she had ever given a cheque for a sum of Rs. 11,80,000/- to the appellant as a token of having refunded the sale consideration. On the contrary, she took the plea that the cheque in question was stolen by the appellant in as much as he had taken away the signed cheque book, income tax returns, PPF account passbook etc. from the respondent. The Appellant filed a rejoinder to this, contesting the claim of the respondent.

4. The learned trial court after hearing the arguments dismissed the application under Order XXXIX Rule 1 & 2 CPC seeking restraint order against the respondent from dealing with the suit property. The reasons for dismissal of the application for ad-interim injunction was that the Appellant had placed reliance on the agreement to sell dated 07.01.2009 for canvassing his suit for specific relief wherein it was shown that the respondent had received a sum of Rs. 10 lacs and handed over the possession of the suit property to the Appellant. The trial court observed since the Appellant was claiming the possession of the suit property u/s 53-A of the Transfer of Property Act and on the basis of the agreement to sell creating right, title or interest in respect of the immovable property, therefore, the said document ought to have been compulsorily registered as required u/s 17(1-A) of the Registration Act, 1860. Therefore, the document was stated to be inadmissible in evidence. No prima facie case of having agreed to purchase the property, in favour of the appellant was made out.

5. So far as the question of irreparable loss being caused to the Appellant was

concerned, on this also the learned Judge observed that merely because on cancellation of the entire transaction a cheque for a sum of Rs. 11,80,000/- is purported to have been issued by the respondent to the Appellant has bounced does not mean that the cancellation agreement cannot be relied upon. It was observed by the trial court that so far as the dishonour of the cheque on presentation is concerned, this could have been taken care of by the Appellant by filing a case under Negotiable Instruments Act. The Court had also taken note of the fact that despite the dishonour of cheque on 16.12.2010 till the time when the application was decided more than one and a half year had elapsed but no action was initiated by the appellant on the basis of dishonoured cheque. Therefore, on this reasoning also the Court did not find that the Appellant is likely to suffer an irreparable loss which may warrant grant of injunction.

6. The third point regarding balance of convenience for the purpose of obtaining an ad-interim order was also not found in favour of the appellant.

7. I have heard the learned Counsel for the parties and gone through the impugned order. I find myself in complete agreement with the learned trial Judge that this was not a case which warranted grant of any ad-interim injunction in favour of the Appellant. The reasons which are given by the learned trial court are not only legal but very much material for holding so.

8. After the amendment of the Registration Act, an agreement to sell creating right, title or interest in respect of any immovable property in respect of which possession is purported to have been given, requires compulsory registration u/s 17(1-A) of the Registration Act, 1860. The non-compliance of the said provision invites sanction u/s 49 of the Registration Act, 1860 which lays down that the document which requires compulsory registration, if not registered, it will be inadmissible in evidence. If the document dated 07.01.2009 which is the basis of filing the suit for specific performance and injunction itself becomes inadmissible it cannot be said that the Appellant/plaintiff in the suit had been able to establish a prima facie case which is first sine qua non for grant of injunction. Similarly, the learned trial court was absolutely right that if the version of the parties is admitted that the transaction entered into on 07.01.2009 was sought to be cancelled by a subsequent agreement dated 02.07.2010 by a document in writing and a cheque for a sum of Rs. 11,80,000/- which included interest at the rate of 12% on the principal amount was allegedly drawn by the respondent gets dishonoured that will not mean that the document of cancellation of transaction would be inadmissible or that irreparable loss would be suffered by the Appellant in case the respondent is not prevented from dealing with the property. The reason for this is that the Appellant having accepted the amount of Rs. 11,80,000/- being the sale consideration had chosen to seek refund of his money without going in for specific performance and if that cheque had bounced he ought to have instituted a case u/s 138 of the Negotiable Instruments Act which has not been done. This contemporaneous act of the Appellant also shows that the factum of the Appellant suffering irreparable loss itself becomes doubtful.

Similarly, the balance of convenience is also not in favour of the appellant, therefore, the respondent could not be saddled with the restraint order. For the reasons mentioned above, I feel that the order passed by the learned Additional District Judge rejecting the application of the Appellant under Order XXXIX Rule 1 & 2 CPC is reasoned order and does not suffer from any infirmity, illegality, incorrectness either on facts or on the application of law thereto. Accordingly, the present appeal of the Appellant is dismissed.