(2017) 12 RAJ CK 0015

In the Rajasthan High Court

Case No : 1011 of 2017

M/s. Solanki Green Marbles Private Limited — APPELLANT

Vs

Kalu Masar S/o Shri Heeraji Masar — RESPONDENT

Date of Decision : 07-12-2017

Acts Referred:

Code of Civil Procedure, 1908, Section 151, Order 43Rule 1, Order 8Rule 9 - Saving of Inherent powers of Court
<a href=4008>Contract Act, 1872<

Citation : (2017) 12 RAJ CK 0015

Hon'ble Judges : Virendra Kumar Mathur

Bench : SINGLE BENCH

Advocate : Narendra Thanvi, P.S. Chundawat, OP Mehta, VD Vaishnav, Vipul Dhandia

Final Decision : Dismissed

Judgement

1. This Civil Misc. Appeal under Order 43 Rule 1 CPC has been filed against the order dated 28.01.2017 passed by the learned Additional District Judge, Kherwara in Civil Misc. Case No.40/2016.

2. Briefly stated, a suit was filed by the appellant for specific performance of contract and permanent injunction along with an application for temporary injunction stating that the respondent is holding a mining lease near village Nayagaon, Tehsil Simalwada, District Dungarpur for an area measuring 10,000 square meter, which stands renewed up to 05.02.2022. It was

submitted that the respondent made an application before Mining Engineer, Dungarpur and the said mining lease was transferred vide order dated 17.12.2012 and the rider agreement was executed and registered on 19.12.2012. It was stated that the appellant had invested crores of rupees for development of the mining lease area by deploying latest machineries, by raising loans from financial institutions, however, the sanction for transfer of mining lease and rider agreement were canceled by the State Government on the ground that in the various land mining lease could not be transferred without prior permission of the Ministry of Forest, Government of India. It was further stated that the appellant had challenged the aforesaid cancellation by way of writ petition before this Court and this Court has directed for maintaining status quo and the writ petition is pending. It was further stated that since the humble appellant has developed the mining lease area by investing huge money and by deploying machineries, the respondent had executed an agreement dated 15.09.2014 in favour of the appellant to the effect that whatever mineral shall be excavated by respondent shall be sold to the appellant only and to none else. Thus, a concluded contract came to be executed between the parties. In pursuance of the agreement dated 15.09.2014, the respondent handed over the excavated mineral to the appellant and started earning profit, however, in the meantime, due to greed, the respondent started selling the mineral to other parties and when the appellant started watching the activities of the respondent, he started threatening the appellant that he will not sell entire excavated material to him and will not abide by the agreement dated 15.09.2014. It was submitted that the respondent is bound to comply with the terms of the agreement dated 15.09.2014 and in case the respondent does not comply with the terms, the appellant would suffer irreparable injury, which could not be computed in terms of money. It was prayed that during the pendency of the suit, temporary injunction may be granted and that the respondent be restrained from selling the excavated mineral to any person and comply with the terms of the agreement dated 15.09.2014.

3. The respondent filed reply to the application for temporary injunction and denied allegations contained in the application for temporary injunction. However, the transfer of mining lease in favour of the humble appellant vide order dated 17.12.2012 was admitted. It was submitted that the writ petition is pending before this Court and the suit is not maintainable. It was also submitted that the agreement dated 15.09.2014 is forged. The respondent also raised the question of jurisdiction of the Court. It was also submitted that the appellant filed an application under Order 8 Rule 9 read with Section 151 CPC and controverted the allegations contained in the reply filed by the respondent. It was prayed that the humble appellant may be permitted to file rejoinder. A rejoinder was also filed on record by the humble appellant, which was taken on record by the trial court. Certain documents filed by the parties were also taken on record by the trial court.

4. After hearing the counsel for the parties, the trial court, vide its order dated 28.01.2017, rejected the application for temporary injunction of the appellant by observing that none of the three ingredients for grant of temporary injunction are found in favour of the appellant.

5. Being aggrieved of the order dated 28.01.2017, the appellant prefers this appeal.

6. It was contended that the learned trial court has

committed illegality in holding that the appellant does not have prima facie case in its favour. It was contended that the respondent has admitted transfer of mining lease in favour of the appellant and rider agreement pursuant thereto having been executed by them. However, cancellation of transfer on mere technicalities led to execution of agreement by the respondent in favour of the humble appellant and there was nothing wrong in it and the respondent is liable to be bound down to strictly comply with the agreement, which was executed by him presence of witnesses. Thus, the appellant has well proved the prima facie case in its favour but the learned trial court, on complete misconstruction of facts and merely on the basis of pendency of writ petition before this court, has declined the relief of temporary injunction.

7. It was also contended that the trial court has proceeded on wholly irrelevant considerations by misintepreting the clauses of the agreement in question and holdnig the agreement to be indefinite agreement, which is not at all relevant on the face of the agreement and the respondent is bound to supply entire mineral excavated from the lease area to the appellant and is prima facie liable to honor the agreement executed by him in favour of the appellant.

8. It was contended that while deciding the question of balance of convenience, the trial court has taken shelter of interim order passed by this Court in the writ petition filed by the appellant. It was contended that the writ petition relates to the challenge of cancellation of transfer of mining lease and this agreement is independent of the said writ petition and, in such circumstances, the question regarding balance of convenience is liable to be decided in favour of the appellant.

9. It was also contended that the trial court has committed illegality in deciding the question of irreparable loss. It was contended that the respondent once had transferred the entire mining lease by taking huge consideration in favour of the appellant and the Mining Department had also sanctioned transfer and executed rider agerement also but the same was cancelled on the technical grounds by the respondent as a moral responsibility cannot be ruled out and once the entire machinery of the appellant is deployed on the mines and it is the appellant who had invested huge amount in development of the mines all this time, it is the appellant, who is going to suffer irreparable injury if the temporary injunction is not granted in its favour.

10. In the context of the contentions raised by the appellant, perused the entire pleadings and documents placed on record.

11. In the present case, the appellant sought specific performance of agreement dated 15.09.2014 and in the main suit, sought the following relief:-

"VERNACULAR MATTER OMITTED"

12. On perusal of the impugned agreement dated 15.09.2014, in the condition No.7 it is stated as under:-

"VERNACULAR MATTER OMITTED"

13. From the aforesaid condition agreed between the parties, it is not clear that as to at what rate excavated mineral will be sold by Kalu Solanki to M/s. Solanki Green Marbles Pvt. Ltd. Nothing has been cleared as to what would be the partial profit nor anything has been clarified that what would be the rent of machinery deployed by Kalu Solanki, declared for excavation of minerals.

14. The respondent contended that the specific

performance of such a condition, which is in itself uncertain with regard to the profit, which will be charged by Kalu Solanki and rate of rent for the machinery deployed by Kalu Solanki for the machinery deployed by Kalu Solanki for excavation of minerals. Such uncertain condition of contract cannot be specifically enforced in view of Section 29 of the Indian Contract Act.

15. The respondent placed reliance upon the judgment delivered in the case of Barkat Ram Vs. Anant Ram [AIR 1915 Lahore 328] and contended that the provisions of Section 29 of the Indian Contract Act rests upon practical common sense. It is obviously impossible for the Court of Justice to give effect to a contract, the meaning of which it is unable to find out with reasonable clearness. The principle is firmly established that a court cannot undertake to supply defects or ambiguities according to its own notions of what is reasonable, for this would be not to enforce a contract made by the parties but to make a new contract for them.

16. He also placed reliance upon the judgment delivered in the case of Delhi Development Authority, N.D. and another Vs. Joint Action Committee, alottee of SFS Flats and others [AIR 2008 SC 1343] and contended that the Hon''ble Supreme Court, in the above matter, has specifically opined that it is well settled that a definite price is an essential ailment of the binding agreement. Although a definite price need not be stated in the contract but accession thereof either expressly or impliedly is imperative.

17. Reliance was also placed on the judgment delivered in the case of Smt. Phuljhari Devi Vs. Mithai Lal & Ors. [AIR 1971 Allahabad 494], in which it was held that in a suit for specific performance, the contract of sale must be definite and

precise and if it is uncertain it must be held to be void under Section 29 of the Indian Contract Act. Specific performance is an equitable relief and the contract of which, specific performance is sought, must appear to be correct and precise and no oral evidence was admissible to add to the terms or contents of Ex.6. (See Sections 91 and 92 of the Evidence Act). It must, therefore, be held that the contract fo sale, Ex.6, was void for uncertainty.

18. In Kovuru Kalappa Devara Vs. Kumar Krishna Mittar & Anr. [AIR 1945 Madras 10], the Hon''ble Madras High Court observed that Section 29 contemplates that the meaning of an agreement shall be clear from the face of it. Hence, a suit on a document undertaking to pay the certain amount "after deductions as would be agreed upon" between the parties must fail by reason of Section 29 .

19. In Sudha Jain Vs. MP Housing and Infrastructure Development and Ors. [2014(1) MPLJ 630], it was held that the importance of definite price being the bedrock of the binding agreement was noted in following terms in Delhi Development Authority, N.D. and another Vs. Joint Action Committee, allottee of SFS Flats and others:-

"80A Definite is an essential element of a binding agreement. A definite price although need not be stated in contract but it must be worked out some premise as was laid down in the contract. A contract cannot be uncertain. It must not be vague."

20. In view of this, the trial court has rightly observed that the agreement, which is sought to be enforced, is an uncertain agreement. While deciding the application for grant of temporary injunction, the appellate court can interfere with the order of trial court only in the event when the trial court, while granting or refusing temporary injunction, if:

(a) the trial court possesses no power to grant such order; (b) the trial court exceeded jurisdiction vested with it; (c) the temporary injunction granted or denied is based on totally irrelevant considerations; (d) the trial court has left out relevant considerations; (e) the trial court acted malafidely; (f) the discretion exercised for improper or collateral purposes; (g) the discretion has been exercised colourably; (h) the discretion has been exercised without adhering principles of natural justice; and (i) the order granting or denying temporary injunction is highly unreasonable.

21. Thus, it is well settled that the issuance of temporary injunction is a discretion vested with adjudicating court and in its most basic sense the decision to grant or deny a temporary injunction is an attempt to promote substantial justice with a view to strike balance of equities between the parties. Substantial justice requires that all circumstances be considered before a temporary injunction is issued, and a determination be made that injunction is reasonably necessary to protect legitimate rights of the parties during the course of adjudication of the principal dispute. Specific criteria in reaching a decision for grant or deny temporary injunctions includes the real likelihood of irreparable injury, beside the degree relating to likelihood of success of the dispute on the merits. There is nothing on the record, which shows that the trial court has acted arbitrarily, capriciously or passed contrary to the facts and circumstances of the case.

22. In view of the above, I do not find any merit in this case and, therefore, the appeal is hereby dismissed.

