

(2008) 02 DEL CK 0130

In the Delhi High Court

Case No : IA No. 14649 of 2007 in CS (OS) No. 2392 of 2007

Pantaloon Retail (India) Ltd.

APPELLANT

Vs

Jones Lang Lasalle Meghraj and Others

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Citation : (2008) 148 DLT 56

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Bhimrao Naik and Rajiv Nayar, Rishi Agarwala, Ameet Naik and Akshay, for the Appellant; Arun Jaitley and R.S. Endlaw, for the Respondent

Judgement

Shiv Narayan Dhingra, J.—This suit has been filed by the plaintiff with a prayer that this Court should pass a mandatory injunction against the Defendants directing Defendants to execute lease deed in respect of 1,10,000 sq. feet of area in "South Point", DLF City, Phase V, situated in Sector 53 Village Wazirabad, Gurgaon, Haryana as per draft dated 8th May, 2007 sent by Defendant No. 2 and to take all consequential steps for allowing the plaintiff to perform the plaintiff's rights and obligations under the Lease Deed and the MoU/agreement dated 12th May, 2004.

2. WS has been filed by Defendants No. 2 and 3 raising objection about the maintainability of the suit within the territorial jurisdiction of this Court in view of Section 16 of CPC. I have heard the Counsel on the question of jurisdiction.

3. Brief facts relevant for the purpose of deciding the issue are that plaintiff alleges that Defendant No. 2 had agreed to grant a Lease to the plaintiff in respect of a area of about 1,10,000 sq. feet in the above-said Mall for a period of 9 years @ Rs. 39/- per sq. feet. A Memorandum of Understanding (MoU) was signed between the parties for this purpose on 12th May, 2004, which gave details about the understanding reached between the parties. In terms of this MoU, plaintiff handed over a cheque of Rs. 1,01,000/- as token money, which

amount was duly accepted and the cheque was got encased by Defendant No. 2 at New Delhi. After execution of MoU, correspondence ensued between the parties while the construction of Mall was going on. When the construction of the Mall got completed, Defendant No. 2, by e-mail dated 5th October, 2006 forwarded a draft of formal Lease Deed to plaintiff. The plaintiff alleged that some terms of MoU were not incorporated in the draft Lease Deed, so by e-mail dated 10th October, 2006 plaintiff requested Defendant No. 2 to incorporate all the terms of the MoU. Though the initial MoU was signed by Defendant No. 2, the draft Lease Deed sent contained the name of Defendant No. 3 also as the Lesser. On enquiry Defendant No. 2 told plaintiff that Defendant No. 3 was in possession of the property and was part of various group entities of Defendant No. 2. The plaintiff prepared for opening its store in the Mall and incurred an expenditure of about Rs. 60 lac and on the request of plaintiff, Defendant No. 2 permitted sister company of the plaintiff to store fixtures in the premises. The plaintiff forwarded a draft of the bank guarantee for Rs. 59 lac by e-mail dated 26th April, 2007 for Defendant No. 2's approval. plaintiff was communicated that Defendant would get the draft approved from their lawyers. Defendant No. 2 however, failed and neglected to take steps to approve the same. The plaintiff again reminded the Defendant to do the same in May, 2007 and thereafter in August, 2007. plaintiff submitted that thereafter plaintiff found a change in the attitude in Defendant No. 2. Defendant No. 2 did not enter into any further correspondence. So, plaintiff had serious apprehension that on account of boom in real estate sector and increase in property prices, Defendant No. 2 was attempting to resile from the contract and alienate the suit premises to a third party. plaintiff had filed the present suit with the above relief.

4. The basic facts about entering of MoU between plaintiff and Defendant No. 2 and non-signing of Lease Deed are not disputed. The question arises is, whether this Court has jurisdiction to entertain the suit for specific performance of MoU in respect of a property situated in Haryana. Counsel for the plaintiff relied on 2001 VII AD 513 (SC) wherein the question of territorial jurisdiction of Bombay High Court was considered by the Supreme Court in respect of suit for specific performance of agreement to sell of a property situated in Indore, M.P. The question was considered in view of Clause 12 of Letters Patent of Bombay High Court which provided that suits for land or other immovable property, if such property is situated within the local limits of original jurisdiction of High Court, can be tried in High Court and in all other cases, if the cause of action arisen wholly within the local limits of ordinary original jurisdiction of the High Court or if the Defendant dwells or carries on business or personally works for gain within such limits. The Bombay High Court had held that as far as it was concerned, the suit for specific performance of an agreement to sell even though it may relate to the land, was not a "suit for land". The Supreme Court considered the question in Adcon Electronics Private Limited case as to what is a "suit for land" and after considering various judgments observed as under:

17. It may be seen that Sub-section (1) is an enabling provision. A plaintiff in a

suit of specific performance may ask for further reliefs mentioned in Clauses (a) and (b) thereof. Clause (a) contains reliefs of possession and partition and separate possession of the property, in addition to specific performance. The mandate of Sub-section (2) of Section 22 is that no relief under Clauses (a) and (b) of Sub-section (1) shall be granted by the court unless it has been specifically claimed. Thus it follows that no court can grant the relief of possession of land or other immovable property, subject matter the agreement for sale in regard to which specific performance is claimed, unless the possession of the immovable property is specifically prayed for.

18. In the instant case, the suit is for specific performance of the agreement for sale of the suit property wherein relief of delivery of the suit property has not been specifically claimed, as such it cannot be treated as a "suit for land".

19. We cannot also accept the contention of Mr. Chitale that the suit is for acquisition of title to the land and is a "suit for land". In its true sense, a suit simplicities for specific performance of contract for sale of land is a suit for enforcement of terms of contract. The title to the land as such is not the subject-matter of the suit.

5. plaintiff also relied on Mrs. Bhawna Seth Vs. DLF Universal Limited and Another, wherein this Court had considered the Supreme Court Judgment in Adcon Electronics Private Limited as well as judgment in Harshad Chiman Lal Modi Vs. DLF Universal and Another, and observed that in case a suit for specific performance does not claim the relief of possession, even if the property is situated outside the Delhi, the suit can be entertained by Delhi Court. There are other judgments cited by the plaintiff Counsel of Delhi High Court to the same effect.

6. The Defendants have relied on Harshad Chiman Lal Modi Vs. DLF Universal and Another, wherein objections as to territorial and pecuniary jurisdiction of the Defendant were upheld by the Hon'ble Supreme Court despite the fact that Defendant in the initial Written Statement had specifically taken the stand that it admits to the jurisdiction of the Court and trial had continued for about 8 long years and after 8 years Defendants raised objection to the jurisdiction of the Court. The District Court upheld the objections and held that Court was not having jurisdiction to entertain a suit for specific performance of the property where property was outside the jurisdiction of the Court. No doubt that in the suit for specific performance filed by the plaintiff in that case plaintiff had sought relief of execution of Lease Deed and delivery of possession. Defendants also relied on Uttam International Vs. Jogender Pal Singh, wherein this Court had held that when the industrial plot was outside Delhi the suit seeking a decree for specific performance of contract would not be maintainable in Delhi.

7. A perusal of different judgments on the question of jurisdiction shows that in case of a suit for specific performance of an agreement to sell, if the plaintiff does not claim the relief of possession and only claims the relief of execution of

sale deed, this Court can entertain the suit on the ground that Defendant resides within the jurisdiction of this Court. Thus, it is to be seen as to what is the nature of the suit of the plaintiff. plaintiff had entered into a MoU whereby it was agreed between the plaintiff and Defendant No. 2 that after completion of the Mall, Defendant No. 2 would execute a Lease Deed in favor of the plaintiff at a specified rate and hand over the possession of the area as agreed to the plaintiff, for running its business. The rate of rent, increase in rent, the period of lease were all given in the MoU. The prayer clause of the plaintiff would show that plaintiff had asked this Court to issue an injunction to the Defendants jointly and severally to execute the Lease Deed as per the draft dated 8th May, 2007 signed by Defendant No. 2 and also to give mandatory injunction to take all consequential steps for allowing the plaintiff to perform the plaintiff's rights and obligations under the said lease Deed. The consequential step which a Lesser can take in pursuance of the execution of Lease Deed is to hand over the possession for the beneficial enjoyment of the premises by the plaintiff. Thus, this suit is seeking mandatory directions to the Defendants to honour the Lease Deed and to give possession of the property to the plaintiff, so that plaintiff can exercise his right under the Lease Deed of running the business.

8. It cannot be disputed that lease confers an estate in the land/immovable property and it is not a mere personal or contractual agreement. A lease, whether for fixed term or a periodic lease, confers a right in the property enabling the tenant/lessee to exclude all third parties including the landlord from possession for duration of the lease period in return of the rent. Therefore, when injunction is sought from the Court against the Defendants for all consequential steps, it only means that plaintiff has sought injunction from the Court for handing over the possession of the leased premises and allowing the plaintiff to exercise his right of possession and enjoyment. There cannot be a lease without transfer of the possession and use of the property in exchange of payment of rent. I consider that the present suit has been filed by the plaintiff not only for mere execution of an instrument titled "Lease Deed" but it is a suit seeking mandatory injunction against the Defendants for all consequential steps i.e. the transfer of possession, handing over the premises and enjoyment of premises by the plaintiff for its business. The present suit, Therefore is in respect of immovable property and not for personal obedience, I find that in view of Section 16 CPC and in view of Judgment of Supreme Court in Harshad Chiman Lal Modi Vs. DLF Universal and Another, , this Court has no jurisdiction to entertain the suit. The plaint be returned to the plaintiff to enable him to file the same before the Court of appropriate jurisdiction.