
(2012) 03 DEL CK 0664

In the Delhi High Court

Case No : I.A. No. 10702 of 2009, I.A. 314 of 2010, I.A. 4573 of 2010, Criminal M.A. No. 17344 of 2010 and CCP No. 130 of 2010 in CS (OS) No. 1545 of 2009

Pranay Dubey and Another

APPELLANT

Vs

Smt. Meena Kumari and Others

RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3A, Order 39 Rule 4, Order 40 Rule 1
Criminal Procedure Code, 1973 (CrPC) — Section 340

Citation : (2012) 03 DEL CK 0664

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Anusuya Salwan, with Ms. Neha Mittal and Mr. Kunal Kohli, for the Appellant; D.V. Khatri, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—The present suit was filed by the plaintiffs for specific performance praying that a decree of specific performance be passed with regard to the agreement dated 21.11.2008 or alternatively a decree of Rs. 1 crore be passed along with interest @ 24% p.a. and a sum of Rs.50 lac as damages.

2. By this order I propose to pass order in the following pending applications filed by the parties :

a) I.A. No. 10702/2009 under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 filed by the Plaintiffs.

b) I.A. 314/2010 under Order 40 Rule 1 of the Code of Civil Procedure, 1908 filed by the plaintiffs.

c) I.A. 4573/2010 under Order XXXIX Rules 3(A) & 4 of the Code of Civil Procedure, 1908 filed by the defendants.

d) CrI. M.A. No.17344/2010 u/s 340 Cr.P.C. filed by the plaintiffs.

e) CCP No.130/2010 filed by the plaintiffs.

3. Plaintiff No.1 Mr. Pranay Dubey and Mrs. Anuradha Dubey, wife of plaintiff No.2 herein were owners of a property bearing Plot No. 891 & 886, GTB Enclave, Dilshad Garden, Delhi-93 admeasuring about 32 sq mts each. They were jointly running a play school under the name and style of "Bal Nikunj Public School" on the said property.

4. The case of the plaintiffs is that :

(a) Defendant No.3 Rajender Kumar, managing director of K.D. Model School, approached plaintiff No.1 and indicated that they intend to sell the school. He offered the plaintiffs to purchase the same incase they were interested. The said School is situated at Khasra No. 29/9, Barwala Village, Delhi-39 (herein after referred to as the "suit property"). Defendant No. 3 also informed the plaintiff No.1 that the school is recognized and is upto class 10th, having 550 students strength alongwith Open School Centre.

(b) The plaintiffs agreed to buy the said school for a total consideration of Rs. 2,15,00,000/- (Rupees Two Crores Fifteen Lac). The parties entered into an Agreement to Sell dated 17.01.2008. As per the Agreement to Sell dated 17.01.2008 earnest money of Rs. 4,00,000/- (Rupees Four Lac) was paid by the plaintiffs to the defendants. The plaintiffs further state that in order to raise funds, they sold their play school and their residential house at Mangla Apartments, Patparganj, Delhi and shifted to a rented accommodation for Rs.9000/- per month.

c) Total sum of Rs.70,00,000/- (Rupees Seventy Lac only) were paid by plaintiffs upto 14.10.2008. The said payment was made to the defendants in the following manner :

a. Rs. 4,00,000/- as earnest money on 17.01.2008

b. Rs. 4,00,000/- on 17.02.2008

c. Rs. 4,00,000/- on 03.04.2008

d. Rs. 22,00,000/- on 19.04.2008

e. Rs. 6,00,000/- on 22.05.2008

f. Rs. 28,00,000/- on 09.06.2008

g. Rs.2,00,000/- on 14.10.2008

(d) On 21.11.2008 another agreement was executed between the parties wherein it was agreed that the plaintiffs will have to pay further sum of Rs. 30 lac and thereafter the defendants would execute a sale deed in favour the plaintiffs and rest of consideration shall be paid by plaintiffs after getting a bank

loan against the suit property. According to plaintiffs, a further sum of Rs.30 lac was paid to the defendants in cash. The defendants have denied having received the said amount.

5. It is stated in the plaint that the plaintiffs had approached the defendants many times for getting the sale deed executed, but, the defendants ignored the requests despite of the fact that they are very much willing to perform the remaining of the contract and buy the suit property.

6. As the plaintiffs have come to know that the defendants are negotiating with some third party pertaining to the suit property, the plaintiffs have filed the present suit alongwith interim application praying to restrain the defendants from entering into contract with any third party and sell the suit property. The suit alongwith interim application were listed before court on 24.08.2009 when summons were issued to the defendants and interim order was also passed.

The operative part of the interim orders read as under :-

"Accordingly till the next date of hearing an ad interim ex parte injunction restraining defendants, their agents, assigns, servants or any other persons claiming to them from selling, alienating, transferring or creating any third party interest with respect to property bearing Khasra No. 29/9, Village Barwala, Delhi-110039 i.e. K.D. Model School."

7. The defendants have filed their written statement and reply wherein they have denied having received a sum of Rs. 1 crore towards part consideration with respect to suit property. It is stated by them that they have received only a sum of Rs. 70 lac as per the agreement dated 21.11.2008. Since the plaintiffs failed to perform their contractual obligation nor they have shown any document about the approval/sanction of loan from the bank, thus, it lacks their bonafide intention to purchase the suit property.

8. In the replication, the plaintiffs have denied all the allegations made in the written statement. It is stated that the defendants have committed forgery and have manipulated the documents by signing the papers in different names. The plaintiffs have also denied the contention of the defendants that the plaintiffs have failed to perform their part of the Agreement dated 17.01.2008 and 21.11.2008. It is submitted by the plaintiffs that as per the agreement to sell dated 21.11.2008, the plaintiffs paid Rs.1 crore to the defendant and thereafter, the defendants had to execute the sale deed of the school plot in favour of the plaintiffs. The plaintiffs had to then obtain loan from the bank and pay the remaining amount. It is submitted by the plaintiffs that the plaintiffs were running jointly play/primary school named Bal Nikunj Public School from their property bearing No.891 and 886, G.T.B. Enclave, Nand Nagari, Delhi- 110 093, and they were earning a handsome amount per month from these three schools. In the month of April, 2007, a proposal came to the plaintiffs to purchase one big school instead of running three small schools and after deliberation, the said agreements were executed and the deal was struck between the parties. The

plaintiffs thereafter, had offered a sum of Rs.10 lac cash as earnest money as per agreement. However, the defendants wanted 25% as earnest money before making the agreement. Since the funds could not be arranged by the plaintiffs, the plaintiffs had to sell their mother's flat on 04.06.2007 for Rs.50 lac and offered Rs.55 lac to the defendant No.3 who submitted that his old mother, namely, Kavilash Devi, on whose name the school was being run was not ready for selling the school and asked the plaintiffs to wait till defendant No.3 convinced her. Therefore, the plaintiffs waited for five months and in December, 2007, the defendant No.3 informed that he has convinced his mother and assured her that the name of school will not be changed and her statue will also be installed in the school campus. The deal was struck for the agreed price of Rs.2.15 crores. By 09.06.2008, the plaintiffs paid Rs.68 lac to the defendants and asked the defendants to execute the sale deed so that the remaining amount be paid after taking loan against the property. But, the defendant No.3 kept postponing the execution of the sale deed due to illness of his old mother who expired in July, 2008. In October 2008, the defendant No.3 demanded Rs.2 lac more from the plaintiffs which was paid on 14.10.2008 and in November, 2008, the defendant No.3 again demanded Rs.30,00,000/- and got ready to make a revised agreement on 21.11.2008 with clear conditions of Rs.30,00,000/- by 28.11.2008 so that the sale deed would be executed and thereafter, balance of Rs.1.15 crore by loan against suit property after execution of the sale deed.

9. The defendant No.3 took a cheque of Rs. 30 lac as security and asked the plaintiffs to make payment of Rs.30 lac by 28.11.2008 then the original revised agreement will be given to them. Therefore, on 28.11.2008 the plaintiffs paid a sum of Rs.30 lac in cash and asked the defendant No.3 to return of the cheque but, defendant No.3 informed the plaintiffs that his wife (defendant No.1) has gone to his relative in Rohini for attending Pooja and she has kept the cheque somewhere in her almirah. Then, the plaintiffs asked him for acknowledgement of the amount of Rs.30 lac as well as previous payment of Rs.2 lac but the defendant No.3 assured to acknowledge the payment at the time of returning the cheque.

10. After filing suit and interim order, the plaintiffs also filed an application being I.A. No.314/2010 for appointment of a receiver/administrator for the management, protection and day to day administration of the suit property under the provisions of Order XXXX Rule 1 CPC. It is alleged in the application that an order dated 24.08.2009 was passed by this court wherein an ex-parte order was passed and subsequent thereto, it has come to the knowledge of the plaintiffs that defendants are not interested in running the said school from the suit property rather defendants have opened another school under the name of K.D. International School, Gangapur, Rajdhanwar, Giridh (Jharkhand). In view thereof, the student strength of the said school (i.e. K.D. Model School, Delhi i.e. the suit property) is falling rapidly and the administrative condition is very feeble and the school in question might get closed. The school needs proper supervision and administration, therefore, the plaintiffs filed this application seeking appointment

of a receiver who may be allowed to look after the affairs of the school which is run from the suit property.

11. The defendants in reply have stated that the plaintiffs have no locus to file the present application as the plaintiffs have no concern about the management of the defendants' property. It is stated by the defendants that the plaintiffs have entered into an agreement with defendants with regard to property and not for purchasing the school which is owned, controlled and managed by a registered society named "Kavilash Devi Educational Society". At the time of agreement, plaintiffs were informed about the fact that the school is merely a tenant, who is occupying the said property and they have no right, title or authority to sell the school. After verification of all the documents, including the lease deed, the plaintiffs entered into the agreement to sell.

12. The defendants also filed the application being I.A. No.4573/2010 for vacation of the ex-parte ad interim stay order dated 24.08.2009 passed by this Court on the grounds that the plaintiffs have failed to perform the contractual obligation as per agreement dated 17.01.2008 and 21.11.2008.

13. It is argued by the defendants that both agreements dated 17.01.2008 and 21.11.2008 did not involve the management, control and day to day affairs of the school and as per the agreement dated 17.01.2008, plaintiffs were supposed to pay the total amount on or before 17.04.2008, but the plaintiffs after a lapse of 7 months, approached the defendants and informed that the amount could not be arranged and requested for some more time. They also promised to pay an amount of Rs. 30 lac by 28.11.2008 as per agreement and assured that the bank would give them loan and then the remaining amount would be paid at the time of registration of the sale deed. But, after that also, they did not perform their obligation.

14. It is submitted by the defendants that the plaintiffs sold their residential house due to financial crisis and moved to a rented accommodation much prior to the agreement to sell. Now, it is merely an excuse made by the plaintiffs without any valid reasons and defendants are not responsible for that.

15. During the pendency of these applications, the plaintiffs also filed contempt petition No.130/2010 against the defendants on the grounds that despite the clear and categorical order from this Court, defendants have transferred the school to some third party by changing the members of the said society. After the alteration, the defendants have shifted their base to Gangapur, Giridh (Jharkhand). The signatories of the societies and the bank account have also been changed by the defendants. A CrI. M.A. No.17344/2010 has also been filed by the plaintiffs against the defendants for committing perjury, by giving false statements and the same has been supported by an affidavit in the written statement.

16. The defendants in reply to the applications have stated that K.D. Model School is run by Kavilash Devi Educational Society, who is in charge for the

administration of the school. It is stated by the defendants that plaintiffs have not entered into any contract with the Society. Defendants have submitted in reply that change in the members of the Society does not tantamount to any sort of transfer of ownership of the said land to a third party. Hence, the question of breach of order dated 24.08.2009 does not arise. It is denied by the defendants that they have transferred the said property to some third person(s). It is argued by the defendants that the whole contempt application by the plaintiffs is misconceived and the same has been filed with a malafide intention thus, it is liable to be dismissed. The defendants have also denied all allegations made in Crl. M.A. No.17344/2010.

17. The defendants have denied having received a payment in cash, of Rs.30 lac on 28.11.2008 as alleged by the plaintiffs. However, it is not denied by the defendants having received Rs.70 lac from the plaintiffs.

18. The learned counsel for the plaintiffs during the course of hearing also pointed out the entry made by the plaintiff No.1 in his diary about the payment made to the defendant No.3 in cash which is denied by the defendants. The contention of the learned counsel for the plaintiffs is that the plaintiffs have sold their house as well as other properties in order to get the suit property and paid the entire amount received by them to the defendants as per agreement, but, now the defendants are not prepared to hand over the possession of the school/suit property despite having received the agreed amount as per the agreement, without any valid reason.

19. Mr Khatri, the learned counsel for the defendants, during the course of hearing has made the statement that the defendants are ready to refund Rs.70 lac as received by the defendants. The said proposal is not acceptable to the learned counsel for the plaintiffs who has submitted that the defendants must pay the entire amount i.e. Rs.1 crore and compensation if, the defendants wish to settle the matter.

20. Both parties have made their abovementioned submissions. Despite of efforts, it appears that the settlement is not possible. So at this stage the court has to examine the present case.

21. The grant or non grant of injunction has to be measured within the parameters of three tests laid down by this court. However, the court must weigh the comparative hardship of one party as against the other and has to decide, whether the injunctory relief is warranted or whether interim directions would suffice. Injunctions should not result in extreme prejudice to the defendants. The doctrine of balance of convenience is the essence in the cases for consideration of the issue of grant of injunction.

22. The principle of law relating to temporary injunction during pendency of the suit is well recognized in the decision of the Supreme Court in the case of Dalpat Kumar and another Vs. Prahlad Singh and others, . The relevant portion of the observations of the Supreme Court in the said case states as under:-

It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the Court satisfying that:

(1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant.

(2) The court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and

(3) That the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

The Supreme Court further held:

Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The court further has to satisfy that non-interference by the court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequence of apprehended injury or dispossession of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely on that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibility or probabilities of likelihood of injury and if the court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

23. In M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others, , it was observed as under:-

43..... The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected

against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. See : Wander Ltd. and Another Vs. Antox India P. Ltd., . In order to protect the defendant while granting an interlocutory injunction in his favour the Court can require the plaintiff to furnish an under taking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.

24. Let us now examine the present case in the light of facts and material produced before this Court. Some relevant extract of two agreements dated 17.01.2008 and 21.11.2008 are reproduced here below :

Agreement

Today on 17.01.2008 at K.D. Model School made in 3000 sq. yards situated at Village Barwala, Delhi-110039, We Smt. Meena Kumari w/o Sh. Rajender Kumar and Sh. Saurabh Abhishek s/o Sh. Rajender Kumar have sold this school in Rs.2.15 crore to Sh. Sanjay Dubey, Vinay Dubey and Pranay Dubey s/o Sh. Ramesh Chand Dubey r/o 126, Maitri Apartment, Patparganj, Delhi-11092. Today we have received Rs.4,00,000/- for this purpose, remaining Rs.50,00,000/- will be received in a month and balance in three months.

I. Approximate date Rs.50,00,000/- on 17.02.2008

II. Approximate date Rs. One Crore on 17.03.2008

III. Remaining amount 17.04.2008

Agreement

Today on dated 21.11.2008, the following decision has been taken between seller and purchaser of K.D. Model School, Barwala, Delhi.

By date 28.11.2008, purchaser will pay Rs.30,00,000/- to the seller. With this, seller will have received Rs. One Crore from purchaser, thereafter sellers will execute the sale deed of the school plot in favour of purchasers. Then purchasers will take loan on this school plot from the bank and pay the remaining amount to the sellers as soon as possible."

25. The plaintiffs have also produced the evidence in order to show that they have sold their properties in order to purchase the suit property. The plaintiffs have also filed various documents in order to show that the defendant No.1 has been changing her signature from time to time in order to confuse the issue involved in the matter. The plaintiffs have also filed the RTI document in order to show the change of members after passing the stay order as well as change in the signatories of school and society bank account in Punjab National Bank, Barwala, and appointment of new Manager in place of defendant No.3 inspite of said order. The recorded conversation between the plaintiff No.2 and Investigating Officer named Sabarmal of Police Station Shahbad Dairy, has also

been produced before the Court. The proof of residence on rent @ Rs.9000/- per month after selling their flat is also placed on record. In view of abovesaid facts and circumstances, it is clear that the plaintiffs have been able to make a strong prima facie case for confirmation of interim orders already granted. The balance of convenience also lies in favour of the plaintiffs and against the defendants. If the interim orders are not passed, the plaintiffs would suffer irreparable loss and injury, hence, they are entitled for injunction as prayed for.

26. After having considered the pleadings of the parties as well as the documents placed on record, I am of the considered view that the ex-parte order granted on 24.08.2009 is liable to be confirmed as prima facie it appears that there is a sufficient evidence to show that the plaintiffs and defendants entered into agreements dated 17.01.2008 and 21.11.2008 for the sale of the suit property. Secondly, the defendants during the course of hearing admitted having received Rs.70 lac as per the agreements although the case of the plaintiffs is that the plaintiffs have paid a sum of Rs.1 crore and they were always ready and willing to perform their obligation of the sale deed as per the agreements that they were ready to raise funds for remaining consideration after taking the loan from the bank. The learned counsel for the plaintiffs has made a statement at the bar that the plaintiffs are still willing and ready to perform their part in terms of the said agreements. In view of these reasons, the plaintiffs' application being I.A. No.10702/2009 is allowed.

27. In view of the confirmation of the interim order passed in I.A. No.10702/2009, the defendants' application under Order XXXIX Rules 3(A) and 4 of the CPC, being I.A. No.4573/2010 is disposed of without any further orders.

28. As far as I.A. No.314/2010 is concerned, the court is not inclined to grant the prayer made in this application, rather the trial in the suit be expedited. Therefore, the application is dismissed.

29. So far as CCP No.130/2010 and CrI. M.A. No.17344/2010 u/s 340 Cr.P.C. are concerned, the same would be considered at the time of final hearing of the suit.

CS (OS) No. 1545/2009

30. List the matter before the Joint Registrar on 09.04.2012 for admission/denial of the documents and before Court for framing of issues and direction for trial on 20.04.2012.