
(2012) 05 DEL CK 0405
In the Delhi High Court
Case No : C.R.P. 155 of 2008

Punjab and Sind Bank

APPELLANT

Vs

Lalit Mohan Madan and Co.

RESPONDENT

Date of Decision : 23-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Citation : (2012) 130 DRJ 436 : (2012) 5 ILR Delhi 525

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Harish Katyal, for the Appellant; Raman Kapur, with Aviral Tiwari, Advocate., for the Respondent

Final Decision : Disposed Off

Judgement

Indermeet Kaur, J.

1 The impugned order is dated 30.07.2008; the application filed by the petitioner i.e. Punjab and Sind Bank u/s 10 of the CPC (hereinafter referred to as "the Code") seeking stay of the present suit had been declined. Record shows that the Punjab and Sind Bank had filed a suit for specific performance on 30.12.1987; this suit was directed against M/s. Madhan & Co. a partnership firm comprising of two partners. It was registered as Suit No. 78/1988. It was filed in the High Court but thereafter due to the change in the pecuniary jurisdiction, it was transferred to the district court; during the pendency of this suit Lalit Mohan Madhan/M/s. Madhan & Co.(the said partnership firm) filed a suit against the Punjab and Sind Bank seeking a declaration, permanent injunction on the basis of the same documents i.e. the agreement which was the subject matter of the suit for specific performance which had been filed by the Punjab and Sind Bank; the prayer in this second suit was that the aforementioned agreement to sell dated 15.3.1977 and 5.4.1977 be declared null and void. This suit was registered as Suit No. 2074/1998. During the course of these proceedings the present application u/s 10 of the Code was filed by the petitioner seeking stay of this

later suit. Impugned order had however declined the prayer.

2. Vehement contention of the learned counsel for the petitioner is that all the ingredients of Section 10 of the Code stood met and the first suit which was a suit for specific performance was qua the same agreement dated 15.3.1977 and 5.4.1977.

3. Record shows that M/s Madhan & Co. had purchased a plot of land measuring 344.65 sq. mt. in an open auction from the DDA; it was thereafter offered for sale to the Punjab and Sind Bank by a aforementioned communication dated 08.01.1977 it was followed up by another communication dated 15.3.1977; letter of acceptance of the Punjab and Sind Bank is dated 30.3.1977. This agreement was for a total sale consideration of Rs.12.50 lacs out of which Rs. 12.25 lacs was paid by Punjab and Sind Bank to Madan & Co. A joint application was also made by the parties before the DDA seeking transfer of the plot in favour of the Punjab and Sind Bank; possession of the land was also handed over to the Punjab and Sind Bank. However on 31.08.1985, M/s. Madan & Co. wrote a letter to Punjab and Sind Bank to treat the agreement as cancelled as on 23.09.1986 DDA had also threatened to make re-entry into the property.

4. Record further shows that the second suit was filed on 21.09.1998 which was during the pendency of the first suit. This suit was filed by Sh. Lalit Mohan Madhan/Ms.Madan & Co. against the Punjab and Sind Bank; it was a suit for declaration and possession; contention was that the agreement entered between the Punjab and Sind Bank and Ms/ Madan & Co. be declared null and void; further contention being that it was only on 31.09.1986 that Madan Co. was informed by the DDA about the refusal of the permission to transfer the plot and their proposal to re-enter the property; contention being that this whole transaction was subject to the permission of transfer of property by the DDA in favour of the Punjab and Sind Bank which permission was refused; this being a contingent contract, the said agreement and sale letters dated 15.03.1977 and 05.04.1977 be declared null and void.

5. Admittedly, two suits are between the same parties. The first suit is a suit for specific performance qua the agreement/sale letters dated 15.03.1977 and 05.04.1977. Prayers made in the first suit read as under:

a) A decree for specific performance of the agreement to sell building constructed on plot B Safdarjang Community Centre, New Delhi alongwith leasehold rights in the site of the said property leased in favour of defendant no. 1 by the President of India be passed in favour of the plaintiff and against the defendants and the defendant No. 1 be directed to obtain requisite permission from the Delhi Development Authority and in case the said permission is not forthcoming at the instance of defendant No. 1, the permission for sale be applied for afresh through the Registrar of this Hon''ble Court and upon receipt of such permission the property be conveyed to the plaintiff through a registered sale deed that be directed to be executed by the Registrar of this Hon''ble Court

in favour of the plaintiff.

b) That in case specific performance be not allowed, the plaintiff prays for a decree in its favour in the amount equivalent to the market value of the property prevailing on the date of the decree. The plaintiff also prays that interest be awarded on the market value of the property determined on the date of the decree till the date of realization at the bank rates prevailing at the relevant time.

c) The plaintiff prays for a decree for permanent injunction restraining defendant No. 1 from in any manner negotiating for sale or assigning the property in favour of any body else other than the plaintiff bank or from applying for permission to sell in favour of any body other than the plaintiff, to the defendant NO. 4, Delhi Development Authority.

d) The plaintiff also prays for a mandatory injunction directing Delhi Development Authority not to grant permission for sale of the suit property in favour of anybody other than the plaintiff as also a direction be issued to the Delhi Development Authority to finally dispose of the application for grant of permission pending with them ever since 9.2.79.

e) Cost of the suit be awarded and

f) Such other or other relief be granted as this Hon''ble Court deems fit and proper in the circumstance of the case.

6. The second suit which is a suit for declaration has been filed by Sh. Lalit Mohan Madhan/Ms.Madhan & Co. seeking a declaration to the effect that the aforementioned letters dated 15.03.1977 and 05.04.1977 be declared null and void as the contract was a contingent contract and DDA not having accorded permission to transfer the property, this contract had come to an end. The prayers made in the second suit read as under:

i) Pass a decree of declaration in favour of the plaintiffs and against the defendants, declaring the agreement for sale dated 15.3.77/5.4.77 as void ab-initio and otherwise frustrated and that the plaintiffs continued to be the owner of the property bearing plot No. B, Community Centre, Safdarjung Enclave, New Delhi with the constructed area comprising of ground floor measuring 1298 sq. ft. first floor measuring 1298 sq. ft. second floor measuring 1166 sq. ft. basement floor measuring 1298 sq. ft. and mezzanine floor measuring 534 sq. ft. and defendants have no right, title or interest in the same.

ii) Pass a decree or possession in favour of the plaintiffs and against the defendants in respect of plot No. B, Community Centre, Safdarjung Enclave, New Delhi, admeasuring 344.65 sq. ft. with the constructed area of the ground floor measuring 1298 sq. ft. first floor measuring 1298 sq. ft. second floor measuring 1166 sq. ft. basement floor measuring 1298 sq. ft. and mezzanine floor measuring 534 sq. ft. and defendants may be directed to be ejected from the same and plaintiffs put in possession thereof.

iii) Cost of the suit may also be awarded in favour of the plaintiffs and against the defendants.

iv) Any other order or further orders as this Hon"ble court may just deem fit and proper in the facts and circumstances of the case, be passed.

7. The Trial Court has noted all these facts in the correct perspective but illegally failed to apply the requisite tests to deal with an application u/s 10 of the Code.

8. Relevant would it be to extract the provisions of Section 10 of the Code herein below -

10. Stay of suit.-No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in 1[India] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of 1[India] established or continued by 2[the Central Government] 3[***] and having like jurisdiction, or before 4[the Supreme Court].

9. The essential ingredients for the applicability of Section 10 of the Code are that if the matter in issue between the parties is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title and both the proceedings are pending before the competent courts of law the second suit shall be stayed. This provision is mandatory. The object of Section 10 is to prevent courts of current jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The following essential conditions for the application of Section 10 of the Code can be broadly enumerated as under:

- (a) There must be two pending suits on same matter,
- (b) These suits must be between same parties or parties under whom they or any of them claim to litigate under same title,
- (c) The matter in issue must be directly and substantially same in both the suits,
- (d) The suits must be pending before competent Court or Courts,
- (e) The suit which shall be stayed is the subsequently instituted suit.

10. One of the test of the applicability of Section 10 is whether on the final decision being reached in the previous suit such a final decision will operate as res judicata in a subsequent suit; to decide whether the second suit is hit by Section 10, the test is to find out whether the plaint in one suit would be the written statement in the other suit or not. If this test is positive the decision in one suit will operate as res judicata in the other suit. This is the principal test on which Section 10 is applied.

11. Applying this test to the instant case, it is clear that the decision in the first

suit (as is evident from the prayers) will operate as res judicata in the second suit. Section 10 is clearly applicable.

12. The matter in issue being directly and substantially in the previous suit and subsequent suit being the same, the provisions of Section 10 are attracted. In this background, the Trial Court has committed an error; impugned order is accordingly set aside. Petition disposed of accordingly.