

(2011) 05 DEL CK 0208

In the Delhi High Court

Case No : Regular Second Appeal No. 210 of 2007

Rajeev Metals

APPELLANT

Vs

D.S.I.D.C. Ltd. and Others

RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15

Citation : (2011) 05 DEL CK 0208

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Fanish K. Jain, for the Appellant; Ruchir Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 18.04.2007 which had reversed the findings of the trial Judge dated 31.07.2006. Vide judgment and decree dated 31.07.2006, the suit filed by the Plaintiff Rajiv Metals seeking possession of a plot allotted to him under the relocation scheme had been decreed; decree of mandatory injunction had been passed in favour of the Plaintiff and against the Defendant to hand over the plot bearing No. 120 pocket C, Sector 1, Bawana Industrial Estate to the Plaintiff within 30 days. This judgment was reversed by the first appellate court. The suit of the Plaintiff stood dismissed.

2. The case of the Plaintiff as is evident from the pleadings is that he is a businessman carrying on his business under the name and style of M/s Rajiv Metals; he had applied for allotment of the plot under the scheme of relocation of industries from non confirming residential areas to industrial areas in terms of orders of the Supreme Court in the case of M.C. Mehta v. Union of India and Ors. The Plaintiff was allotted the aforementioned plot; earnest money was paid; 50% of the total price after adjusting the earnest money was to be deposited by 31.03.2001. There was a delay in depositing the same amount on account of delay in the release of loan by Defendant No. 3 in favour of the Plaintiff. It is

contended that the Plaintiff had deposited 50% of the total amount on 12.11.2001 i.e. after a delay of about seven months; remaining 50% was to be deposited by 20.04.2002 in terms of the letter dated 08.04.2002 issued by Defendant No. 2; the said amount was also deposited; the possession of the plot was not handed over for the reason that the first installment of 50% was deposited late. Present suit was accordingly filed.

3. Written statement was filed contesting the suit. It was stated that apart from the objection of pecuniary jurisdiction the delay in releasing the loan was on account of the fault of the Plaintiff and not because of fault of Defendant No. 3. First installment of 50% was admittedly a delayed payment.

4. On the pleadings of the parties, the following seven issues were framed:

1. Whether Plaintiff is entitled to get a decree of Mandatory injunction as prayed? OPP

2. Whether Plaintiff has not come with clean hands before this Court and suppressed material and true facts from this Court? OPD

3. Whether Plaintiff has locus standi to file and maintain the present suit? OPD

4. Whether suit is not signed/ verified in accordance with the provision of Order 6 Rule 15 Code of Civil Procedure? OPD

5. Whether there is no privity of contract between the Plaintiff and Defendant No. 2? OPD

6. Whether this Court has no jurisdiction to try and to undertake the present suit? OPD

7. Relief.

5. One witness was examined on behalf of the Plaintiff; no evidence was led on behalf of the Defendant. All the issues were decided in favour of the Plaintiff and against the Defendant. He was entitled to the relief as prayed for.

6. This judgment was reversed in first appeal. The first appellate court was of the view that the suit is not maintainable in the present form; the Plaintiff had not sought any declaration that his cancellation of allotment was illegal; the question of granting a decree of mandatory injunction did not arise. Further on merits also, the court was of the view that the Plaintiff is not entitled to the relief which had been granted in his favour; testimony of PW-1 was not reliable. Suit was accordingly dismissed.

7. This is a second appeal. It had been admitted and on 01.12.2010, the following substantial questions of law were formulated:

1. Whether the present suit seeking mandatory injunction without seeking relief of declaration was maintainable?

2. Whether the findings in the impugned judgment dated 18.4.2007 qua issue No. 5 are perverse? If so its effect?

8. On behalf of the Appellant, it has been urged that the judgment of the trial Court suffers from a perversity; the suit of the Plaintiff was illegally dismissed; the Plaintiff had made the initial payment of Rs. 30,000/- in time; there is no dispute to this fact; the delayed payment of the first installment was for the reason that the DFC had failed to release the loan amount in favour of the Plaintiff; this payment which was made by the Plaintiff on 12.11.2001 although late by seven months yet it had been accepted by the Defendant without any demur or protest; in fact on 08.04.2002 a letter had been issued to the Plaintiff seeking payment of the balance amount; in these circumstances, it does not now lie in the mouth of the department to state that this payment was made belatedly; the letter cancelling the allotment of the Plaintiff was never received by him; he learnt about this for the first time only when the written statement was filed; even at that time this cancellation notice dated 24.07.2001 was not placed on record. The impugned judgment calls for an interference on the aforementioned scores.

9. Arguments have been rebutted. It is pointed out that the case of the Defendant all along has been that the Plaintiff has made payment of the first installment belatedly; this delay cannot be waived; letter dated 08.04.2002 was a letter which has been sent to all the allottees; attention has been drawn to Clause 3 of the said document. It is pointed out that it had been specifically stipulated therein that a person who has made his payment belatedly will not be eligible for consideration for allotment. This has rightly been noted in the impugned judgment which calls for no interference.

10. There are certain facts which are not in dispute. It is not in dispute that on 10.01.2001 payment of the initial earnest money of Rs. 30,000/- was made and the allotment of plot bearing No. 120 pocket C, Sector 1, Bawana Industrial Estate had been made in favour of the Plaintiff. As per the terms and conditions of allotment, the next 50% amount i.e. a sum of Rs. 1,80,000/- had to be paid by 31.03.2001. This amount was paid belatedly i.e. after a delay of seven months on 12.11.2001. Contention of the Plaintiff was that this was for the reason that he was suffering from financial constraints; his father and mother were suffering from serious medical problems and this has been detailed in his letter dated 18.06.2003 which he had addressed to the department.

11. It is also not in dispute that a total consideration of the aforementioned plot was Rs. 4,20,000/- and the amount of Rs. 1,80,000/- which added to the initial payment of Rs. 30,000/- would be Rs. 2,10,000/- i.e. 50% of the total amount of the plot. The letter dated 18.06.2003 was the only communication addressed by the Plaintiff to the department wherein he had described his serious financial constraints to the department; this representation of the Plaintiff had been rejected by the department on 18.07.2003. Thereafter legal notice dated 31.07.2003 had been sent by the Plaintiff before filing the present suit.

12. Vehement submission of the Appellant that the cancellation notice dated 24.07.2001 purported to have been sent by the Defendant to the Plaintiff found mention for the first time in his written statement is a false statement. This contention is patently incorrect; he has made a wrong submission before this Court. Ex. PW-1/H is the reply sent by the DSIDC to the legal notice of the Plaintiff. In this reply in para 5, it has clearly been stated that the allotment of the plot of the Plaintiff had been cancelled vide notice dated 24.07.2001; thus this submission before this Court that this fact of cancellation surfaced for the first time in the written statement of the Defendant is false. The Plaintiff has not come to court with clean hands. Once this cancellation notice had been specifically known to the Plaintiff nothing prevented him from seeking a declaration that this cancellation notice dated 24.07.2001 be declared null and void. No such prayer was asked for; only prayer was a prayer for mandatory injunction directing the Defendant to allot the aforementioned plot to him. This prayer without the relief of declaration could not have been granted to the Plaintiff and this has rightly been noted in the impugned judgment.

13. The Supreme Court in *Shamsher Singh Vs. Rajinder Prashad and Others*, had noted that the question whether the relief of injunction prayed for by a Plaintiff should be considered as a consequential to the main relief or not has to be decided on the basis of the allegations and the prayers contained in the plaint; mere astuteness in drafting the plaint will not be allowed to impede the court from looking at the substance of the relief asked for.

14. In *Sarjiwan Singh Vs. Delhi Vidyut Board*, a Bench of this Court had noted that in a suit filed by the Plaintiff against Delhi Vidyut Board praying for an injunction simplicitor in the wake of the electricity bills received by him; the court had noted that without seeking a relief of injunction holding the electricity bills to be invalid, the suit for injunction by itself was not maintainable; declaration should have been asked for before the consequential relief of injunction could be granted.

15. Unless and until a declaration was obtained by the Plaintiff i.e. a declaration to the effect that the cancellation of his plot vide notice letter dated 24.07.2001 is null, void and non-est, subsequent injunction i.e. relief of mandatory injunction directing the Defendant to allot the aforementioned plot to the Plaintiff could not have been passed.

16. Letter dated 08.04.2002 addressed by the Defendant to the Plaintiff has also been perused. The tenor of this letter is relevant and the extract of it reads as follows:

You are, requested to make the balance 50% cost of the plot latest by 20.04.2002 and collect your possession letter after completing the requisite legal formalities immediately. The draft of the undertaking, identity slip, affidavit and N.O.C from the concerned bank, in case you have taken loan against E.M.D. from any bank, are required to be submitted before taking over the possession letter,

may be collected from the Relocation Division free of cost on any working day between 10.00 a.m. to 1.00 pm on production of proof of payment of 100% cost of the plot. In case you have already deposited 100% cost of the plot, this letter may be ignored. However, other formalities for taking you possession of the plot should be completed.

Those allottees who have not deposited 50% cost of the plot by 31st March, 2001 (Including short fall of 5% of the cost of plot an adjustment towards interest payable on account of EMD) and further could not deposit the 5% short fall on account of difference of EMD with interest @ 18% w.e.f. 01.04.2001 upto 01.04.2002, are not eligible for making payment.

It may also please be noted that in the event of non-payment of the cost of the plot and non-completion of legal formalities as sated above, the allotment shall be liable for cancellation.

17. It clearly states that those allottees who have not deposited 50% of the cost of the plot by 31.03.2001 are not eligible for making this payment. The case of the Plaintiff fell in this category. He had not deposited 50% of the cost of the plot by 31.03.2001; this is admitted; he had deposited this amount only on 12.11.2001; as such the condition contained in this letter of 08.04.2002 applied to the Plaintiff; he was not eligible for consideration for allotment on payment of the balance amount. This letter also stipulated that in case of non-compliance, the allotment would be liable to be cancelled.

18. Ex.PW-1/B is also a relevant document. This was a letter dated 20.01.2001 written by the Plaintiff to the DSIDC stating that he had applied for a term loan with the DFC vide receipt dated 10.01.2001 with permission to pay the amount from his own sources; extension of time for payment of the first installment of 50% had been sought. This letter was received by the DSIDC on 10.01.2001; contention of the Appellant that the payment could not be made of the first installment for no fault of his and only because the DFC had not sanctioned the loan is thus not borne out. Even as per the case of the Plaintiff, he had applied for loan to the DFC only on 10.01.2001; installment had to be paid latest by 31.03.2001.

19. The Plaintiff has not come to the Court with clean hands. His vehement contention that it was only in the written statement that the letter of cancellation dated 24.07.2001 had been brought to his notice has been negated by Ex.PW-1/H. Relief of injunction is a discretionary relief. The impugned judgment had also correctly noted that in the letter dated 18.06.2003 written by the Plaintiff to the DSIDC/Defendant he had stated that there is no time limit for making the payment of installment from persons whose loan has been passed by the DFC wherein Ex. PW-1/B he had sought time to arrange for his funds. Discretion was thus rightly not exercised in his favour. The impugned judgment calls for no interference.

20. The trial Judge had decided issue No. 5 in favour of the Plaintiff. This finding

had not been upset in the impugned judgment.

21. In view of the aforementioned discussion, both the substantial questions of law are decided against the Appellant and in favour of the Respondent. There is no merit in this appeal. Dismissed.