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(1991) 05 DEL CK 0085

In the Delhi High Court

Case No : Regular First (OS) Appeal No. 11 of 1991

Rajinder Singh APPELLANT

Vs

V.P. Ahuja RESPONDENT

Date of Decision : 17-05-1991

Acts Referred:
Transfer of Property Act, 1882 — Section 5(1)

Citation : (1992) 47 DLT 288

Hon'ble Judges : Dalveer Bhandari, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : R.K. Anand, Ashok Bhas, Harsh Patney, Yogesh, S.N. Kumar and S.K. Gupta, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) This is the plaintiff''s appeal against the judgment and decree dated 15/01/1991, of the learned Single Judge by which though the suit of the plaintiff for specific performance of a certain agreement to sell executed by the defendant-respondent as vendor was decreed, a condition was imposed on the plaintiff to deposit the sale consideration in Court within a period of two months. It is against this direction of deposit of sale consideration that the plaintiff has filed the appeal.

(2) The defendant on 1/02/1989, executed a receipt for having received a sum of Rs. I lakh in cash as earnest money from the plaintiff for sale of his house bearing No. D-22, defense Colony, New Delhi, built on a plot of land measuring 333 sq. yds. The sale consideration was agreed at Rs. 70 lakhs out of this Rs. 6 lakhs were to be paid at the time of the execution of regular agreement to sell and the balance Rs. 63 lakhs at the time of registration of the sale deed before the Sub Registrar, New Delhi, after necessary sale permission from the Land and Development Office and clearance from the Appropriate Authority u/s 269UC of the Income Tax Act,1961. The plaintiff on 24/02/1989, filed the suit for injunction against the defendant praying that defendant to comply with his

obligation in joining the plaintiff for obtaining clearance u/s 269UC of the Income- tax Act ,, 1961, and to execute the formal agreement to sell. plaintiff also sought a restraint on the defendant from selling, transferring, or otherwise creating any third party interest respecting the suit property. Written statement was filed questioning the maintainability of suit. Subsequently, however, on an application filed by the plaintiff the suit was allowed to be converted into one for specific performance of the agreement to sell. Now the plaintiff prayed for a decree for specific performance in respect of contract/agreement dated 1/02/1989, requiring the defendant to transfer property No. D-22,defense Colony, New Delhi, against receipt of balance of sale consideration of Rs. 69,00,000.00 by executing a transfer/sale deed in respect of the aforesaid property and presenting the same for registration before the Sub- Registrar, New Delhi. The plaintiff also prayed for a decree for possession in his favor directing the defendant to hand over peaceful and vacant possession of this property to the plaintiff. There was prayer in the alternative for damages as well.

(3) At the time when amendment of the plaint was allowed it was also directed that plaintiff would appear in Court on the next date of hearing and he would also file an affidavit before that date as to how he intended to make arrangement for the payment of the sale consideration as alleged by him. Though the affidavit was filed, the plaintiff did not appear. Again he was directed to appear in Court but then also he defaulted. In the affidavit filed by the plaintiff, he stated as under :-

"3.That I stated that besides money in banks, I have investments in various companies which I can draw upon, retrieve or utilise for the purchase of the suit property. I had floated new company M/s.Peacock Farms (P) Ltd. and I wanted to get the house registered in the name of the said company on advise of my Tax consultants and I would have routed my monies/investments to the said company for payment of the sale consideration. The Defendant objected to sell the house in the name of my company and I had agreed to purchase the house in my name in accordance with the writing dated1.2.89."

(4) After some more hearings before the learned Single Judge, the defendant filed an application (I.A.9010/90) on 3/11/1990, stating that the suit was frivolous because the plaintiff was never ready and willing to pay the sale consideration and to have the sale deed executed and that his only object had been to raise some controversy and to delay the disposal of the suit by all possible means. Defendant said that the suit of the plaintiff was an abuse of the process of the Court. The defendant further said that without prejudice to his right to initiate appropriate proceedings for recovery of damages/loss caused to him, the plaintiff be directed to produce the sum of Rs. 69 lakhs and Rs. 6 lakhs for paying the registration charges and on that the defendant was willing to execute the documents for the purpose of completing the sale. Reply to this application of the defendant was filed by the plaintiff. That the suit was false and frivolous was denied. He said the application had been filed to save costs

incurred by the plaintiff in filing the suit. He said the sale consideration be paid after the defendant had complied with the necessary formalities. He said the defendant was at that time only entitled to receive a further sum of Rs. 6 lakhs and no more.

(5) In view of the respective stand taken by the parties, the Court didn?t frame any issue and after hearing the arguments gave its judgment. the suit was decreed as under :-

"I decree the suit and direct that the plaintiff shall deposit in Court the balance sale consideration of Rs. 69,00,000.00 within two months and on such amount being deposited the defendant shall take steps to execute and register the sale deed in favor of the plaintiff after complying with the provisions of the Income Tax Act within two months thereafter and in case the defendant fails to take such steps, the Registrar of this Court shall take stepson accordance with law for executing and registering the sale deed in favor of the plaintiff after taking necessary steps under the provisions of the Income Tax Act as well. The plaintiff shall have half of the costs of the suit from the defendant and also possession of the property. In case the plaintiff fails to deposit the amount within the stipulated period, the suit shall stand dismissed with costs. The defendant can withdraw the amount, if so deposited ,only on execution and registration of sale deed in favor of the plaintiff. All the I.As. would stand disposed of."

(6) On 8/02/1991, the plaintiff filed an application (I.A. 1308/91) praying that time for depositing the amount as ordered in the judgment may be enlarged. After notice to the defendant the Court dismissed the application on 27/02/1991. The Court, however, observed that in order to see that the amount which was deposited did not become static it was ordered that in case the plaintiff deposits the amount the same would be kept by the Registrar in fixed deposit for a period of six months initially. Against this order the plaintiff filed an appeal [FAO (OS) 48/9.1] before a Division Bench of this Court. The Court dismissed the appeal by order dated 11/03/1991. The plaintiff was directed to deposit the balance sale consideration within four weeks after expiry of two months from the date of the decree on the condition that the plaintiff would forego costs of the suit as a consequence of extension of time.

(7) The plaintiff, it appears did not deposit the amount as ordered in the decree. This appeal was then filed on 15/04/1991 against the decree. We issued notice to show cause to the defendant as to why appeal be not admitted and at the same time stayed the operative portion of the decree in so far as it required the plaintiff to deposit the amount within a period of two months or within the extended period. Answer to show cause notice having been filed by the defendant, we have heard the learned Counsel for the parties in fuller details. Mr. Anand, learned Counsel for the appellant, said that direction requiring the plaintiff to deposit the amount of balance sale consideration was not legal and it was not only against the receipt/agreement to sell dated 1/02/1989, but also against the specific provisions of Section 55(l)(d) of the Transfer of Property Act.

He said the requirement of law was that the balance sale consideration was to be paid only at the time of registration of the sale deed. Mr. Anand, however, did not say anything as to why at least the amount of Rs. 6 lakhs could not have been paid. In support of his submission on Section 55(l)(d) of the Transfer of Property Act he referred to four decisions of the High Courts in (1) Zakir Sadagar Vs. Dolegobind Ghose and Others, ; K. Saraswathi (alias) K. Kalpana Vs. P.S.S. Somasundaram Chettiar, ; (3) Ram Krishna and Another Vs. Mukand Shanker and Another, ; and (4) Maruti Vishnu Kshirsagar Vs. Bapu Keshav Jadhav, .

(8) Section 55 of the Transfer of Property Act provides for rights and liabilities of buyer and seller of immovable property. These are in the absence of a contract to the contrary between the parties. Under clause (d) of subsection (1) of this section the seller is bound, on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place .That may be so but here the suit is for specific performance of an agreement to sell respecting immovable property and Court has discretion, though judicial discretion, to grant such a reliever not. The Court is well within its rights to impose conditions and no fault can be found with these.

(9) Mr. Kumar, learned Counsel for the respondent-defendant submitted that the plaintiff had accepted the judgment when he applied to the Court for extension of time for deposit of the balance sale consideration in terms of the judgment. He said the appeal Fao (OS) 48/.91 was limited only for seeking extension of time and the plaintiff could well have challenged the judgment by filing an appeal at that time. Mr. Kumar said though the present appeal would be within the period of limitation taking in account the time spent in obtaining certified copy of the judgment and decree, but the appeal was filed without there being any certified copy of the judgment and decree. He said there was no reason, Therefore, why the appeal could not have been filed earlier and at least when Fao (OS) 48/91 was filed and heard. According to him, appeal was filed when time for deposit of the amount under the judgment had already expired. Mr. Kumar said that the approach of the plaintiff has throughout been dishonest and in this connection he referred to the affidavit of the plaintiff filed in pursuance to the Court''s order relevant portion of which has been reproduced above. Mr. Kumar drew our attention to the certificate of incorporation of M/s. Peacock Farms (P) Ltd. which company was registered on 7/09/1988, with two shareholders, namely, Amarjit Singh Bakshi and Kanwaljit Singh. Bakshi, both sons of Mr. S.S. Bakshi. We find the plaintiff who is son of Mr. H.S. Grover is stranger to this company. The authorized share capital of this company is Rs. 1,00,000.00 divided into 1000equity shares of Rs. 100.00 each. This fact would itself show that the affidavit filed by the plaintiff is a false document. The fact that the plaintiff did not disclose as to how he intended to make arrangement in -the payment of the sale consideration when specifically asked to do so and in fact filed a false affidavit ,would go in a long way to demonstrate the strength of argument of Mr. Kumar that the plaintiff had no money and he just wanted to entangle the

valuable property of the defendant in the litigation for some ulterior purpose and without himself suffering any loss for having not to pay the sale consideration.

(10) In our view the learned Single Judge has taken correct view of the matter considering the facts and circumstances of the case. We have been unable to find any error in the judgment for us to interfere. The learned Single Judge has considered all the relevant circumstances. As noted above, the Court has, while decreeing a suit for specific performance, discretion requiring the purchaser to deposit the sale consideration in Court. Explanation to clause (e) of Section 16 of the Specific Relief Act, 1963, is quite relevant on this point .A Bench of this Court in M/s. Ansal Properties and Industries Pvt. Ltd.v. Rajinder Singh and Another 1989 (3) DL 268, had to say asunder:-

"SECTION 16 will apply to all suits for specific performance, including a suit falling u/s 12. It is the provisions of Section 16 which stipulate as to what has to be averred in the plaint by the plaintiff. Unless and until it is averred that the plaintiff is ready and willing to perform the contract, a suit for specific performance will not be decreed. What is important to note is that the Explanation specifically provides that it is not essential for the plaintiff to actually tender to the defendant or to deposit the money in Court, except when so directed by the Court. Normally, Therefore, no money is to be tendered and it is only in cases where the Court feels that, though an averment may have been made in the plaint as postulated by Explanation to Section 16, the plaintiff may not actually have the money to pay the consideration. Therefore, in order to bind the plaintiff or to satisfy itself about the truthfulness of the averment, the Court may direct the plaintiff to deposit the money in Court. This course, in our view, should be adopted rarely ,and only when the Court is of the opinion that the averment of the plaintiff being ready and willing to perform the contract may not be quite true."

(11) We find this is one of those cases where discretion has been very rightly exercised by the learned Single Judge requiring the plaintiff to deposit the balance of sale consideration. In any case the amount so deposited is not being paid over to the defendant at this stage. There is no infringement of the provisions of Section 55(1)(d) of the Transfer of Property Act either. We agree with the impugned judgment and decree and find no merit in the appeal and dismiss the same.

