
(2005) 12 DEL CK 0095

In the Delhi High Court

Case No : Writ Petition (C) No. 20489 of 2005

Ralli Estate Pvt. Ltd.

APPELLANT

Vs

N.D.M.C.

RESPONDENT

Date of Decision : 12-12-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 14
Contract Act, 1872 — Section 7(1)

Citation : (2005) 2 CTLJ 382 : (2006) 126 DLT 703

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Ravi S.S. Chauhan, for the Appellant; Anjana Gosain, for the Respondent

Final Decision : Allowed

Judgement

Markandeya Katju, C.J.—This writ appeal has been filed for quashing the tender notice issued by the respondent/NDMC dated 19.9.2005. We are informed that the tender process has already been completed and in any case we do not find any illegality in the tender notice dated 19.9.2005. Hence, we reject the writ petition so far this prayer is concerned.

2. Mr. Sandeep Aggarwal, learned counsel for the petitioner has prayed for refund of his security amount Rs. 7,25,000/- deposited with the NDMC. The NDMC did not refund the amount because it was said that the petitioner should first take possession of the property and pay the license fee in advance. The petitioner was reluctant to take possession of the premises because it was not remeasured as per the tender notice. Be that as it may, we are of the opinion that the amount of security has to be refunded by NDMC to the petitioner because no concluded contract had come into existence.

3. It may be mentioned that by an order of the NDMC dated 1.6.2004 the premises in question being restaurant space at Yashwant Place, Chanakya Puri, New Delhi were allotted to the petitioner but subject to his obtaining NOC and

also subject to certain other conditions.

4. It is well settled that a conditional acceptance is not an acceptance and merely amounts to a counter offer.

5. In Section 7(1) of the Contract Act it is stated that:-

In order to convert a proposal into a promise the acceptance must be absolute and unqualified.

6. It, Therefore, follows that a conditional acceptance is not an acceptance in the eye of law but a counter offer . If that counter offer is accepted by the first party then of course there will be a concluded contract. In this case, by letter dated 15.6.2004 the petitioner informed the NDMC that there were certain mistakes/ discrepancies which were highlighted. For instance, the petitioner stated that the space has to be physically measured/remeasured in his presence which has not yet been done till date nor has the space been painted, polished or white-washed. There were various other defects which were mentioned in this letter dated 15.6.2004.

7. Thus, a perusal of the letter dated 15.6.2004 to the NDMC shows that this is a counter offer and it is not an acceptance of the counter offer of the NDMC dated 1.6.2004. Since both the letters dated 1.6.2004 and 15.6.2004 merely amount to counter offers, no concluded contract has come into existence.

8. We are of the opinion that since no concluded contract had come into existence between the parties, the amount deposited by the petitioner as a security must be refunded to the petitioner forthwith. The said amount to be paid to the petitioner within a month from today.

9. An objection has been taken by learned counsel for the respondent that this writ petition is not maintainable as it arises out of a contract. In this connection, we would like to say that if both the parties to a contract are private bodies no writ petition would lie. However, if one of the contracting parties is the State under Article 12 of the Constitution, then Article 14 of the Constitution immediately applies. It makes no difference whether the contract in question is a statutory contract or a non-statutory contract because Article 14 of the Constitution will apply and hence a writ petition will lie.

10. In view of the above, the writ petition is allowed.