
(2008) 02 DEL CK 0304
In the Delhi High Court
Case No : CS (OS) No. 157 of 2008

Sh. Akash Mohan Gupta

APPELLANT

Vs

Civcon Engineering and Contracting Co. (India) Pvt. Ltd. and
Others

RESPONDENT

Date of Decision : 11-02-2008

Acts Referred:

Citation : (2008) 02 DEL CK 0304

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : A.J. Bhambhani, Nisha Bhambhani and Ranjita, for the Appellant;
None, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—The plaintiff had entered into a collaboration agreement dated 31st March, 2000 with defendant No. 1. Under this collaboration agreement, defendant No. 1 was to demolish the existing structure of plot No. 27-A, Friends Colony, New Delhi and was to make flats on the plot. The plaintiff was to receive 14,500 square feet of the constructed area including basement over the plot of 470 square yard and remaining 6,000 square feet of constructed area was to go to defendant No. 1 and entire construction was to be done by defendant No. 1 at his own costs and expenses. Over and above that, the defendant No. 1 was also to pay to the plaintiff a sum of Rs. 30 lacs in 3 installments, one installment of Rs. 10 lacs in advance at the time of entering into MoU, second installment of 10 lacs at the time of sanctioning of building plans by MCD and handing over possession of the building to the defendants No. 1 and 2 and third installment of Rs. 10 lacs on completion of the construction of the building. As per MoU, the building was to be constructed and completed by 30th June, 2001 and in case the builder failed to construct the building by that date and hand over the owner's share, the builder was to pay compensation of Rs. 30,000/- per month to the owner/plaintiff.

2. Thereafter, a supplementary agreement was entered into between the parties on 2nd May, 2001, whereby the last date for completion of construction was revised to 30th June, 2002 and other Clauses remained the same. It was further provided that "if builder fails to construct the house by 30th June, 2002 then this MoU/agreement shall come to an end automatically and the builder shall be left with no right or interest in the agreement and the owner shall have right to complete the construction on his own. Any material or plant of the builder lying at site shall become the property of the owner. The owner shall also not be liable to refund the amounts already paid by the builder to the owner."

3. plaintiff has filed this suit alleging that builder though bound by the terms and conditions of the agreement, did not comply with these terms and conditions and failed to pay the final installment of Rs. 10 lacs and failed to complete construction of building by 30th June, 2002 and the builder handed over the possession of the plaintiff's share only on 2nd October, 2003. The builder also did not pay the compensation @ Rs. 30,000/- per month. The builder failed to construct for the plaintiff a room in the basement floor of the plaintiff's share as required under Clause 5(A)(3a) of the agreement and builder failed to construct for the plaintiff, 5 out of 8 number of servant quarters as required under the agreement.

4. The plaintiff had also executed a General Power of Attorney (GPA) in favor of defendant No. 2 giving him right to sell the flats falling in his share. This GPA is a registered document. It is stated by the plaintiff that since defendant Nos. 1 and 2 failed to carry out their obligations and duties, the defendant No. 2 was not entitled to sell his share of the flats to any third party. The GPA was to come into force only after the builder had completed his obligations. Since builder had not completed his obligations, GPA was ineffective and no sale could be made under this GPA. Since defendant No. 2 had already effected sale of the property taking benefit of the GPA and executed sale deed dated 21.5.2004 in favor of the defendant Nos. 4 and 5, the sale deed so executed should be declared null and void. It is alleged that plaintiff came to know about the execution of sale deed on 2nd January, 2007 when affidavit in evidence was filed by the defendant in another case pending before this Court between the parties. plaintiff has filed this suit seeking declaration that GPA executed by plaintiff in favor of defendants No. 1 and 2 on 24.2.2000 was null and void and the sale deed executed by defendant No. 2 in favor of defendants No. 4 and 5 using GPA, in respect of first floor was null and void. He also sought injunction against using GPA by defendant No. 2.

5. A perusal of the suit would show that the plaintiff has claimed that cause of action arose in favor of the plaintiff when the terms and conditions of the collaboration agreement were not fulfilled by the defendant. The plaintiff in the suit has also claimed alternative relief of a sum of Rs. 35,57,000/- on account of breach of different terms and conditions of the collaboration agreement. The collaboration agreement exhausted itself on 30th June, 2002. As per Clause

reproduced above in para 2, the plaintiff was entitled to take possession of the entire building by ousting defendants, get the construction completed and do rest of the work himself. The plaintiff, if wanted to file a suit on the ground of breach of agreement, could have filed within 3 years of 30th June, 2002 which was the last day up to which the agreement was to remain valid. If the terms and conditions had not been complied with, the agreement gave a right to the plaintiff to treat it as null and void and proceed as if he was the absolute owner of the entire property. plaintiff knew it very well that he had executed a GPA in favor of the defendant No. 2. If the defendant had violated the agreement as is claimed by the plaintiff, plaintiff had a right to cancel the GPA and get the cancellation deed registered with the Sub Registrar. The plaintiff did not cancel the GPA and did not take any action against the defendant for breach of any of the terms and conditions, as alleged in the suit, after 30th June, 2002 till the filing of the suit, which has been filed after 7 and "years. The period of limitation for filing such a suit is three years. The suit is hopelessly time barred and liable to be dismissed.

6. The plea of the plaintiff that cause of action arose when he learnt about sale of the property is baseless. The cause of action for the suit itself arose when the various breaches of terms and conditions of MoU were done by the defendant No. 1. I, Therefore, find that the suit is time barred and is not maintainable and is hereby dismissed.