(2010) 02 DEL CK 0062

In the Delhi High Court

Case No : FAO (OS) No. 110 of 2000

Sh. S.K. Gupta and Others APPELLANT

Vs

S. Kuldip Singh through his General Attorney S. Harkirat Singh and Others RESPONDENT

Date of Decision : 19-02-2010

Acts Referred:

Citation : AIR 2011 Delhi 54 : (2012) 1 CivCC 431 : (2010) 159 PLR 2 : (2011) 8 RCR(Civil) 1620

Hon'ble Judges : Madan B. Lokur, Acting C.J.;Mukta Gupta, J

Bench : Division Bench

Advocate : Rohit Kumar, for the Appellant; P.S. Patwalia R.K. Agarwal, Aman Preet Rahi and Sashwat Acharya, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, A.C.J.

1. This decision is in respect of an appeal filed by the legal representatives of Dhanpat Rai, Smt. Sushila Devi (the widow of Din Dayal) and Mohinder Kumar Gupta arising out of an order dated 23rd February, 2000 passed by a learned Single Judge in IA No. 4274/1 999 in CS (OS) No. 280/1982. This decision is to be read in conjunction with the decision rendered by us today in FAO (OS) No. 66/2002 and EFA (OS) No. 4/2002. Therefore, the facts of the case are not repeated.

2. The present appeal arises out of the dismissal of an application u/s 28 of the Specific Relief Act, 1963 (for short the Act). The legal representatives of Dhanpat Rai, Smt. Sushila Devi and Mohinder Kumar Gupta sought rescission of the agreement to sell dated 29/30 July, 1980 and the decree dated 30th April, 1984 passed by the learned Single Judge in CS (OS) No. 280/1982. This prayer was rejected by the impugned order.

3. For the sake of convenience, the relevant portion of Section 28 of the Act is

reproduced below:

28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed. - (1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) xxx xxx xxx

4. A perusal of the aforesaid section clearly lays down that in cases pertaining to the specific performance of a contract, if the purchaser does not, within the period specified by the decree or such other period as the Court may allow, pay the purchase money or any other sum that the Court has ordered it to pay to the vendor, then the vendor may apply to have the contract rescinded.

5. According to learned Counsel for the Appellants, since Kuldeep Singh has not made the payment of the balance consideration to the Judgment Debtors, the agreement to sell dated 29/30 July, 1980 is liable to be rescinded. However, what we find in this case is that the agreement to sell did not specify any period within which Kuldeep Singh was required to make payment of the balance amount of Rs. 12,60,000/- to the Judgment Debtors, nor did it specify any outer time limit for making over the payment of the balance purchase price. Under these circumstances, in view of Hungerford Investment Trust Limited v. Haridas Mundhra and Ors. : (1972) 3 SCC 684 it must be held that under the agreement to sell payment of the balance consideration had to be made within a reasonable period:

If a contract does not specify the time for performance, the Law will imply that the parties intended that the obligation under the contract should be performed within a reasonable time. Section 46 of the Contract Act provides that where, by a contract, a promiser is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time and the question "what is reasonable time" is, in each particular case, a question of fact. We have already indicated that the contract between the parties was not extinguished by the passing of the decree, that it subsisted notwithstanding the decree. It was on implied term of the contract and, therefore, of the decree passed thereon that the parties would perform the contract within a reasonable time. To put it in other words, as the contract subsisted despite the decree and as the decree did not abrogate or modify any of the express or implied terms of the contract, it must be presumed that the parties to the decree had the obligation to complete the contract within a reasonable time. (paragraph 25 of the Report).

6. In Nathulal Vs. Phoolchand, the Supreme held as follows:

In considering whether a person is willing to perform his part of the contract the sequence in which the obligations under a contract are to be performed must be taken into account.... By virtue of Section 4 of the Transfer of Property Act the chapters and sections of the Transfer of Property Act which relate to contracts are to be taken as part of the Indian Contract Act, 1872. If, therefore, under the terms of the contract the obligations of the parties have to the performed in a certain sequence, one of the parties to the contract cannot require compliance with the obligations by the other party without in the first instance performing his own part of the contract which in the sequence of obligations is performable by him earlier. (paragraph 12 of the Report).

7. In view of the decisions of the Supreme Court in Hungerford Investment and Nathulal, the learned Single Judge analyzed the agreement to sell sequentially. The sequence of events and the obligations of the parties to the contract have been determined by the learned Single Judge as follows:

(1) The defendants No. 1 to 8 had agreed to sell the property for a consideration of Rs. 14.00 lakhs out of which the defendants had received Rs. 1 .40 lakhs as advance;

(2) the balance amount of Rs. 12.60 lakhs was payable to the defendants at the time of execution and registration of the requisite conveyance deed and against simultaneous delivery of possession of the property (except one garage, possession of which was given at the time of agreement to sale);

(3) for completing the transfer, the defendants were obliged to

(i) apply to the L&DO/Lessor, for grant of permission to sell the aforesaid property to the plaintiff and pay unearned increase in land price to the Lessor;

(ii) to seek permission of the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 (ULCRA) to sell the property;

(iii) to obtain Income Tax clearance certificates;

(iv) to obtain Estate Duty clearance in respect of the share of deceased Din Dayal

(v) to satisfy the plaintiff of compliance of these within a period of one month of receipt of these permissions;

(4) to execute and get registered a conveyance deed free from encumbrances when the balance amount of Rs. 12.60 lakhs was to be paid by the plaintiff before the Sub Registrar (Assurances), New Delhi and the defendants were to handover vacant possession of the property after discharging liability in respect of house tax, lease money, electricity and water charges or other dues upto the date of delivery of possession to the plaintiff.

The above sequence shows (and we agree with the analysis of the learned Single Judge) that in fact no primary or prior obligation is cast on Kuldeep Singh under the agreement to sell dated 29/30 July, 1980. In fact, the obligation to ensure the performance of the agreement to sell is on the Judgment Debtors. There is nothing to suggest that the Judgment Debtors carried out their part of the agreement to sell and that Kuldeep Singh thereafter failed or was unwilling to carry out his obligations under the agreement, namely, to make the balance payment of Rs. 12,60,000/-. On the contrary, when we required Kuldeep Singh to deposit the balance consideration and some amount on account towards the unearned increase demanded by the L&DO by 11th January, 2010 in our order dated 6th January, 2010 [in FAO (OS) No. 66/2002] he did so.

8. We, therefore, find no reason to interfere with the view taken by the learned Single Judge. We are in agreement that the Appellants have not made out any case for reversing the impugned order dated 23rd February, 2000. There is no merit in this appeal and it is, accordingly, dismissed. No costs.