

(2010) 03 DEL CK 0001
In the Delhi High Court
Case No : FAO (OS) 93 of 2009

Sidharth Sareen and Another

APPELLANT

Vs

Hira Realtors Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2010) 168 ELT 621 : (2010) 4 ILR Delhi 262

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

Bench : Division Bench

Advocate : Jayant Bhushan and Amitabh Chaturvedi, for the Appellant; R.K. Aggarwal, for R1 to R6, Pankaj Kumar Singh, for R-7, 8, 9 and 11, Jeevesh Nagrath, for R-10 and M.R. Shamshad, for R-12, for the Respondent

Final Decision : Allowed

Judgement

Mukta Gupta, J.—The plaintiffs/Respondent Nos. 1 to 6 herein (hereinafter called "the contesting Respondents") filed a suit being CS (OS) No. 260/2008 inter alia praying as under:

- A) Declare that the Forms filed by the Defendants with the Registrar of Companies, as mentioned herein above, are invalid, illegal and null and void;
- B) Grant permanent injunction against the defendants restraining them from acting, representing and/or holding out themselves as directors/shareholders of plaintiff No. 1 company;
- C) Grant permanent injunction restraining the defendants from interfering or dealing with in any manner with the affairs, business and properties of the plaintiff company, and
- D) Pass such other and further order/orders as this Hon'ble court may deem fit, proper and necessary on the facts and circumstances of the present case.

2. Subsequently, an application being IA No. 5611/2008 was filed by the

contesting Respondents under Order 6 Rule 17 of the CPC for the amendment of the plaint. After hearing the parties, the learned Single Judge, vide order dated 22nd October, 2008 permitted the amendments on the ground that the amendments sought were clarificatory in nature and purport to give better particulars of the transactions, subject matter of the suit and the suit is at the initial stage. It is also observed that the counsel for the contesting Respondents has stated that neither any admission is being withdrawn by way of the amendments nor any stand contradictory to the stand taken in the plaint is being taken. The Appellants herein filed an application being IA No. 14255/2008, for review of order dated 22nd October, 2008. The said review application was also dismissed vide order dated 13th February, 2009. The orders of the learned Single Judge dated 22nd October, 2008 and 13th February, 2009 are the orders impugned before us.

3. Learned Counsel for the Appellants has contended that the amendments seek to withdraw the admissions made by the contesting Respondents herein and thus take away a vested right which has accrued to the Appellants. Not only does the amendment seek to withdraw the admission but also set up a new case and hence in terms of the law laid down by the Hon'ble Supreme Court and this Court the amendments should not be allowed. Reliance in this regard is placed on the decisions rendered in the cases of Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others, and Madhu Sudan Gupta v. Dinesh Gupta 133 (2006) DLT 459 (DB).

4. Respondents No. 7, 8, 9, 10 and 11 in the present appeal, who are also the Defendants in the suit, have supported the claim of the Appellants and according to them the Respondent No. 1 company was floated as a special purpose vehicle, which admission is sought to be withdrawn besides setting up a new case, by the contesting Respondents herein.

5. Per contra, learned Counsel for the contesting Respondents states that neither any admission has been withdrawn nor a new case set up. According to him paragraphs 5(a), (b) and (c) brought in by way of amendment are historical facts, relevant for the decision of the case and are permitted in view of the plain reading of Order 6 Rule 17 CPC. It is further contended that the suit is at the initial stage wherein written statement has not been filed as yet and hence no prejudice is caused to the Appellants herein, who are at liberty to set up the defence they wish to. It is further contended that the amended prayer is only elaboration and clarification of prayers (a) and (b) made in the original plaint.

6. It is well settled proposition of law that in a plaint if the plaintiff wants to withdraw his admissions or set up a new case then the amendments cannot be permitted. The Hon'ble Supreme Court in Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, laid down the following basic principles which ought to be considered while allowing or rejecting the application for amendment:

63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) whether the application for amendment is bona fide or mala fide;
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

64. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.

7. The amendments sought to be made in the plaint are reproduced as under in a tabular form:

under	Pre-Amendment	Post-Amendment	Para Amendment
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That sometimes in the plaintiffs state that month of July 2005, Shri sometimes in the Siddharth Sareen and month of July, 2005, Shri Shravan Gupta, Defendant No. 1 defendant Nos. 1 and 2 (Shri Siddharth herein approached the Sarin) and Defendant plaintiffs herein and No. 2 (Shri Shravan evinced interest in Gupta) approached purchasing land in the plaintiff No. 2 (Shri area of Najafgarh. The Hira Prasad Mishra) defendants conveyed to (Promoter and the plaintiffs that they Chairman of had been surveying the plaintiff No. 1 area for quite some time Company) and and they had failed their represented before attempts to purchase any him that they are an land in the said area established business because the land owners house in Delhi, in the said area were which is engaged in either not willing to sell the business of the land to them or they developing real estate were demanding under the flagship of unreasonable

prices from MGF Group of the defendants. Thus, the Companies. The defendants requested the above named plaintiffs to assist them in Defendants further purchasing the land in the represented that they said area. The plaintiffs, have been surveying therefore, assisted the area surrounding defendants to purchase Najafgarh for buying over 125 acres of land for land in order to different group develop commercial companies of defendant properties. However, Nos. 1 and 2 on mutually in spite of their agreed terms and repeated efforts they conditions. had failed to buy any substantial portion of land as the land owners in the area were either not willing to sell the land to them or they were demanding exorbitant rates as the cost of the land. Therefore, the Defendants requested plaintiff No. 2 (Shri Hira Prasad Mishra) to collaborate as working partner for purchasing land in around Delhi.

----- Para 5
That while the above said 5(a) That the plaintiff land was purchased for states that the defendant Nos. 1 and 2, it plaintiff No. 2 (Shri was realized by the Hira Prasad Mishra) defendants that even after agreed to the request getting assistance from of the aforesaid the plaintiffs, they were Defendants and in still facing lot of hurdles partnership with Shri in purchasing land from Hira Prasad Mishra the farmers because they (in his individual were not agreeing to sell capacity), the their lands to unknown Defendants purchased persons and, therefore, more than 100 acres the defendants requested of land in around the plaintiffs that let the Najafgarh, Delhi, in required land be the name of M/s. purchased in the name of Logical Estate Private the plaintiff Company on Limited and M/s. the terms and conditions Prosperous Buildcon appearing hereinafter, on Limited. the clear understanding that while purchasing land in the name of the 5(b) That the plaintiff plaintiff company, the states that the said role of the defendants 100 acres of land was would be limited as purchased over a financiers and period of time from representatives of the July-August 2005 up plaintiff company. to June-July 2006 and also included land belonging to Shri Hira Prasad Mishra, who agreed to sell his 61 Bighas and 4 Biswas land, total admeasuring to 12.75 acres by way of an agreement to sell dated 18.08.2005 which were purchased prior to the further deal of purchase of more than 100 acres of land in partnership in individual capacity.

5(c) That the plaintiff states that in spite of purchasing more than 100 acres of land in around the area, the aforesaid Defendants represented before the plaintiff No. 2 that they were still having huge cash resources at their end and they wanted to invest the same. However, they represented that as they have already invested heavily in land in around Najafgarh, they were not inclined to put any further investment in real estate as that would cause maximum exposure of capital in real estate business alone and would accordingly invest the money as lender in some company to make short term gains.

----- Para 6
That while the above said That the plaintiff land was purchased for states that on defendant Nos. 1 and 2, it 07.12.2005, the was mutually decided plaintiff

No. 2 (Shri that in future whatever Hira Prasad Mishra) land would be purchased alongwith the with the assistance of the plaintiff No. 3 (Shri plaintiff, it would be Abhay Kumar purchased in the name of Mishra) incorporated plaintiff Company. the plaintiff No. 1 company in the name and style of Hira Realtors Private Limited, having its registered office at R ZC-3/189, Mahavir Enclave-1, New Delhi. The authorized share capital of the plaintiff No. 1 company was initially Rs. 1,00,000/- which was divided into 10,000 equity shares of Rs. 10 each. The entire paid up share capital of the plaintiff No. 1 Company was subscribed and issued by the plaintiff No. 2 (Shri Hira Prasad Mishra) and plaintiff No. 3 (Shri Abhay Kumar Mishra) who held 5000 equity shares of Rs. 10 each respectively. plaintiff No. 2 (Shri Hira Prasad Mishra) and plaintiff No. 3 (Shri Abhay Kumar Mishra) were also appointed as the first Directors of the plaintiff No. 1 Company.

----- Para 7

As the plaintiffs wanted 7(a) plaintiff states to have their interest that once the secured so that they Defendants came to might not be duped or know that plaintiff cheated by the defendants No. 2 (Shri Hira in future, it was clearly Prasad Mishra) along understood between the with his family parties that whatever land members had would be purchased in incorporated the the name of the plaintiff plaintiff No. 1 Company with the Company for financial assistance of the sale/purchase and defendants and sold to development of land, different developers at the Defendants the then prevailing showed their interest market price of the land to invest in the in question, the plaintiff No. 1 defendants would be paid Company as 25% commission on such lender/investor. In sales land, over and consideration of their above their investment. loan/ investment the The plaintiff company, Defendants proposed therefore, passed a that they were Resolution dated 23rd interested in 25% of February, 2006, whereby the profits earned by the defendant Nos. 1 and 2 plaintiff No. 1 were authorized as Company from representatives of the selling the land plaintiff Company to purchased from the purchase the land in the money lent by the name of the plaintiff Defendants. company only. 7(b) That the plaintiffs state that they believed the intentions of Defendants to be bonafide accepted their proposal and accordingly the Defendant Nos. 1 & 2 started lending money to the plaintiff No. 1 Company. In the course of its business the Defendants No. 1 & 2 proposed that the plaintiff No. 1 Company may also authorize them to purchase land on behalf of the plaintiff No. 1 Company as it would only help in timely completion of transaction and would be beneficial for the plaintiff No. 1 Company. The plaintiffs who were still at very good terms with the Defendant No. 1 & 2 further accepted their proposal and accordingly in the meeting of the Board of Directors of the plaintiff No. 1 Company held on 23.02.2006, Defendant Nos. 1 & 2 were duly authorized to purchase land on behalf of the plaintiff

No. 1 Company.

----- Para 29A

Not Pleaded That the plaintiff states that illegality committed by the Defendants is further apparent from the fact that the Defendants have also

filed false and fabricated documents with other statutory bodies, like Securities and Exchange Board of India (SEBI). plaintiffs state that in the Red Herring Prospectus (RHP) filed by EMAAR- MGF Land Limited (a company controlled by the above-named Defendants), the Defendants have shown the plaintiff No. 1 Company as their group company as on 31.03.2006, (even though the Defendant Nos. 1 & 2 were neither Additional Director in the plaintiff No. 1 Company nor were they shareholder. It be may not be out of place to mention that in the said RHP of EMAAR MGF Land Limited, the Defendant Nos. 1 & 2 have not declared their contractual interest with the plaintiff No. 1 Company in terms of the provisions of the Companies Act, 1956 in case the said defendants were directors/shareholder in the plaintiff No. 1 Company.

8. Thus on a comparison of the averments in the original and amended complaints, it is apparent that the following admissions have been withdrawn and new facts introduced in the amended complaint by the contesting Respondents:

i. The admission in paras 4 and 5, that 125 acres of land was purchased for the Appellants has been withdrawn. The admission that the contesting Respondents assisted the Appellants to purchase over 125 acres of land for different group companies of Defendant No. 1 and 2 on mutually agreed terms and condition have been withdrawn.

ii. The clear admission in para 6 that while the above said land (i.e. 125 acres) was purchased for Appellants, it was mutually decided that in future whatever land would be purchased with the assistance of the plaintiff, it would be purchased in the name of Respondent No. 1 company has been withdrawn.

iii. The status of contesting Respondents from assistance in purchasing 125 acres of land for Appellants on mutually agreed terms has been converted to collaboration as working partners.

iii. Out of the land purchased from unknown farmers, it has been stated in the amended complaint that the lands include the lands belonging to Respondent No. 2.

v. In para 5 of the original complaint, the status of the Appellants is that of financiers for future transactions. However, in the amended complaint their status has been converted to that of investors and money lenders for the entire transactions.

vi. New facts that more than 100 acres of land was purchased in and around Nazafgarh in the name of M/s Logical Estate Private Limited and M/s Prosperous Buildcon Limited have been introduced.

9. Thus, it would be apparent from the facts narrated above, that vital admissions relevant for the determination of the prayer (c) with regard to the status of Appellants as owners qua 125 acres of land have been withdrawn and a new case is sought to be put up in the amended complaint thereby causing prejudice

to the Appellants. The amendments propose to constitutionally and fundamentally change the nature of the case.

10. Consequently, the appeal is allowed. Orders dated 22nd October, 2008 and 13th February, 2009 passed by the learned Single Judge are set aside. IA No. 5611/2008 in CS (OS) No. 260/2008 is hereby dismissed.

11. No order as to costs.