

(1984) 06 DEL CK 0006

In the Delhi High Court

Case No : First Appeal No's. 94 and 95 of 1984

Tavellen Amarjit Singh and Others

APPELLANT

Vs

General Marketing and Manufacturing Co. Ltd. and Another

RESPONDENT

Date of Decision : 08-06-1984

Acts Referred:

Citation : (1984) 26 DLT 464

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Advocate : Madan Bhatia, S.N. Sapra and I.S. Mathur, for the Appellant;

Judgement

M.L. Jain, J.

(1) Mrs. Birender Amarjit Singh is the owner of premises, a single storeyed house No. 3 South End Lane, New Delhi. These premises were leased to M/s Blackwood Hodge Equipment limited. Ltd., w.e.f. 2-9-1963 for the residence of its directors or employees and the lease continued under her letter dated 5-7-1968. On 8-4-1970, the Blackwood Hodge changed its name as M/s General Marketing & Manufacturing Co. Ltd: (herein the Company). On 25-3-1971 she made a gift of half share in the property in favor of her two daughters Travelled and Uday and son Inder Vijay Singh.

(2) Mrs. Singh wanted to construct a multistoreyed building for residential flats on the aforesaid premises. She did not resort to the procedure for obtaining possession of the premises under the Delhi Rent Control Act, 1958 ; sub-section (I)(g) and sub-section (8) of section 14 and section 20 and in stead entered into an agreement with the Company on 23-7-1971. The features of the said agreement relevant for the present purpose were:-

1.The Company will deliver vacant possession of the house to Mrs. Singh by 31-7-1971. 2. Mrs. Singh will give to the Company a flat on the 9th floor on the swimming pool side Along with 1800 square feet partitioned terrace on top with stairs to terrace from the Hall or from the dining room verandah of the proposed

multi-storeyed building having a floor area of approximately 3600 sq. ft on the corner of the said proposed multi-storeyed building on a monthly rent of Rs. 1300.00 per month. 3. Construction shall be commenced by 30-6-1972 and completed by July 1974. 4. If the work on the proposed building does not commence by 30-6-1972 Mrs. Singh will hand over to the Company vacant possession of the house as covered in the previous lease deed and the letter of Mrs. Singh of 5-7-1968. 5. In case the flat is not given to the Company Mrs. Singh will pay compensation @ Rs. 2500.00 per month by way of liquidated damages till possession of the flat is given.

(3) On 6-6-1973 the Company filed a suit against Mrs. Singh for declaration injunction and specific performance of the said agreement. Parties were directed on 8-6-1973 to maintain status-quo ante. The suit was decreed on 27-4-1979. The decree was set aside by this Court on 24-10-80 and the matter remained in virtue of this judgment, the two daughters and the son as aforesaid were impleaded as parties to the suit.

(4) In pursuance of the aforesaid judgment the plaint was amended on 20-1-1981 and then on 30-9-1981. The substance of the suit is that in pursuance of the said agreement the Company vacated the premises on 31-7-1971 but the defendants did not begin construction for a multi-storeyed building before 30-6-1972 as at no material time did she have any intention to do so. In further pursuance of the agreement she also failed to return the possession of the premises. Upon enquiries made by the Company she replied that the construction could not be undertaken as the authorities concerned refused to give permission for the said construction and the agreement stood frustrated. The company urged her on 23-5-1972 to start construction by 30-6-1972 or return the vacant possession. She sent a reply on 4-10-1972 repudiating the said agreement and all the claims of the company. The Company has performed and at all material time were and are still willing to perform their part of contract as contained in the agreement but the defendant failed and neglected to perform her part of the contract according to the terms of the agreement. Rather, she denied the contract and its validity and pleaded frustration. The Company prayed as follows :

1. That the agreement be declared, as valid, subsisting and binding. 2. That the said agreement be specifically performed and plaintiff be put into vacant and peaceful possession of the said premises, 3. That a perpetual prohibitory injunction be granted restraining the defendants from making or executing any agreement or any other instrument to let out the said premises to any other person and from handing over the possession of the said premises to any other person. 4. That a mandatory injunction be granted directing Mrs. Singh to commence the construction of the said multi-storeyed building and complete construction work by July 1974 or earlier as per stipulation in the agreement.

(5) The defendants resisted the suit on the grounds that the agreement was executed under undue influence. No multi-storeyed building could be constructed

as the sanction for such construction was refused by the New Delhi Municipal Committee. The agreement was null and void and not binding upon the freshly impleaded defendants as they were not parties to it. The suit as against them was also time barred.

(6) On 17-11-1982 the plaintiff moved an application under Order 39 Rule I and 2 CPC that the building was being demolished and an ad interim injunction be granted restraining the defendants from doing so. The learned Additional District Judge granted an ex-parte injunction on 18-11-1982 and also appointed a local commissioner for inspection of the site. The local commissioner made his report on 26-11-1982 which showed that some portion yet remained to be demolished. The defendants replied on 11-2-1983 that the building had been demolished as early as middle of 1980 and that the plans for construction of a multi-storeyed house have now been approved, On 14-3-1983 the learned lower court made the interim injunction absolute. The learned Additional District Judge was of the view that if the agreement is proved, a valuable right in favor of the plaintiff would be established and the plaintiff would be entitled to enter upon the premises in case the agreement in question is not complied with. If the building is allowed to be demolished then the plaintiff will suffer an irreparable injury because the premises could not easily be restored later on. The defendants will not lose much if further demolition is stayed. . "

(7) Against this order one appeal No. 95/84 is filed by Mrs. Singh and the other No. 94/84 is filed by her daughters and son. Both of them are being disposed of by this common order. I have heard the counsel at great length of time.

(8) As regards the prima-facie case, the Company has a difficult task to make out one at this stage. According to the certificate (Ex. P-6) issued by the Registrar of Companies, West Bengal, Calcutta, Blackwood Hodge was originally incorporated on 31-12-1966 but it executed the lease deed on 2-9-1963. Unless it was an act covered by the power of the promoters, it may have a bearing as to the nature of the initial possession of the Company. The defendants 2 to 4 acquired fifty per cent interest in the property on 25-3-1971, when the Company was still in occupation. Mrs. Singh Therefore, could not deal with their share on 23-7-1971. Her statement in her reply (paras 6 and 14) of 16-8-1971 that .she was full owner in occupation cannot bind the other defendants. The defendants also maintain that the suit is time barred as against them. They rely upon the The Ongole Byragi Mutt, Ongole and Others Vs. Inala Kannayya and Others, . From para 4 and para (b) of the prayers, it is clear beyond doubt that the suits for specific performance, and there is no basis in the pleadings for the submission of Mr. Ishwar Sahai that the suit is for possession u/s 5 of the Specific Relief Act and is governed by Articles 64-65 of the Limitation Act. Yet be maintained that it is to be construed as a suit for possession. Here lies upon Ganga Din and Another Vs. Piyare . But that was case of exchange of properties which is not the case in hand. H.V. Rajan v. C.N. Gopal and Others Air 1961 Mys 29 has no application either because the agreement in our case does not create a

lease. It is a surrender of a lease. It is an agreement to lease a flat yet to be built. Therefore, by no implication can the suit be considered to be one for possession when it was expressly said to be one for specific performance.

(9) The other question is whether dates specified in the agreement are essence of the contract. The plaint does not say so expressly. In *Jamshed Khodaram Irani v. Burjorji Dhunjibhai* Air 1915 P.C. 83, *Govind Prasad Chaturvedi Vs. Hari Dutt Shastri and Another*, and *Hind Construction Contractors by its Sole Proprietor Bhikamchand Mulchand Jain (Dead) by Lrs Vs. State of Maharashtra*, it was held that if it was the intention of the parties that time is the essence of the contract, then if the thing is not done at or before the specified time, the contract becomes voidable at the option of the promisee. The stipulations must show that the intention was to make the rights of the parties depend upon the observance of the time limits in a fashion which is unmistakable and not that it should take place within a reasonable time. The normal presumption in such cases is that the stipulation as to time is not the essence of this contract. To my mind, time could not be an essence of this agreement because reconstruction has to face so many difficulties which perhaps could not be and were not foreseen by the parties when they specified certain date lines in the agreement. The condition that if the flat is not given by the stipulated time, compensation will be paid at Rs. 2,500.00 per month is a further pointer that time was not an essence of the contract. If that is so, then there is no case for an injunction restraining the defendants from proceeding to execute the contract. The defendants have been able to cross several hurdles only in the recent past and no more hurdle should be placed in their way.

(10) The defendants also plead that on account of the difficulties faced in obtaining permission for construction within the time specified the contract has become impossible of performance and Therefore, stands transferred. No doubt a lease does not become frustrated, but a contract to lease can u/s 56 of the contract Act : *Raja Dhruv Dev Chand Vs. Harmohinder Singh and Another*, .

(11) There is much to be said in favor of the pleas of the defendants and the Company does not seem to have a strong prima-facie case.

(12) Now as to irreparable injury and balance of convenience the Company has not yet asked for restoration of the building as of old. However, it appears that the local commissioner found on 26-11-1982 that at least 2 rooms were still not completely demolished and perhaps could be utilised by the company if not for its director at least for an employee like a branch manager. The defendants maintain that they had demolished the old building by the middle of 1980. The latest photographs that the appellants have produced show that the building has been reduced to rubble and has ceased to be habitable though perhaps some person without any shelter may take the risk to live for sometime even under the half broken roofs. Let me also refer to certain official documents that have been filed. One is a letter of the Land & Development Office dated 24-8-83 by which it appears that the appellants were allowed to construct a multi-storeyed group

housing building upon payment of a premium Rs. 30 lacs and odd out of which Rs. 10 lacs have been paid. Another document is a notification dated 2-9-83 of the Delhi Administration, Land & Building Department, Urban Land Ceiling Cell, Vikas Bhavan, New Delhi. This order shows that the plots No. 3 & 4 South End Lane have been exempted from ceiling on the ground that the defendants have demolishing the existing structure. The other conditions are that the construction shall be undertaken and completed after obtaining necessary sanction of building plans from appropriate authorities; the building shall be completed within 2 years from the date of approval of the building plans ; that plinth area of each dwelling unit in the building shall not exceed 300 square metres : that one person shall be entitled to only one dwelling unit in this scheme ; that the exempted shall inform the Land Ceiling Cell about the actual date of sanction of the building plans and the date of the commencement of the construction. If any of the conditions are not complied with, the Administration may withdraw the exemption. Now, if the demolition is stayed, what is the benefit that the Company will derive ? If demolition does not take place the building cannot be constructed and the property may be acquired under the ceiling law and for fear of that eventuality the Company perhaps thinks the appellants may be brought to their knees and agree to give the respondents one or two flats on rent in the building on Rs.1300.00 per month for a period of ten years. That is at once a pressure tactics so obvious that no court should lend its might to allow it to succeed. One of the prayers of the Company itself is to ask the appellants to complete the new construction but if the old building is not allowed to be razed to the ground how can an injunction for new construction be granted ? Are the plaintiffs themselves not rendering their own prayer infructuous ? Appellants on the other hand had been fair enough to offer that they will allot one dwelling unit to the Company in case the suit succeeds, but Mr. Ishwar Sahai insisted that the defendants should undertake to give the Company the floor area agreed to before the appellants are allowed to demolish and reconstruct. This will be foreclosing the defenses that the defendants have made in the case. the considerations of irreparable injury and inconvenience are thus certainly in favor of the defendants and not in favor of the plaintiffs" The undiminished portion is certainly of no use to them. If the building is not constructed, great loss is going to occur to the appellants, Equities are sharply against the respondents. Mr. Ishwar Sahai however, contended that there was a status quo during the first round of the case and yet the appellants proceeded with demolition when the suit was remanded by this Court on 29-10-1980 and again they continued demolition after the interim injunction was granted. They cannot seek any protection of the court as they have over reached the court. In such cases the court should restore the status quo ante ; Narayan Sahu and Others Vs. Sri Thakurji Ramji and Others, , Lahore Electricity Supply Co. Ltd. v. Provinces of Punjab Air 1943 Lah41, P. Kesava Rao Naidu Vs. Director of Posts and Telegraphs, Andhra Circle, Kurnool and another, , and Parmeshwari Dass Khanna Vs. Bhola Nath Parihar, . But it seems to me that in this case there is absolutely no over reaching the court or beating the likely process of law because the suit was remanded in 1980, while the injunction was

sought in 1982. This gap of time demolished the contention of Mr, Ishwar Sahai. The respondents cannot be shown the door on this ground ?

(13) I, Therefore, find that the order of the court below cannot be sustained and it is hereby set aside. The" "demolition and reconstruction of the building shall be subject to the result of the suit. The appeals stand disposed of accordingly. No costs.