
(1995) 12 GUJ CK 0010
In the Gujarat High Court

Veetrag Holding Co. Ltd.

APPELLANT

Vs

Gujarat State Textile Corporation Ltd.

RESPONDENT

Date of Decision : 08-12-1995

Acts Referred:

Contract Act, 1872 — Section 17(5)

Transfer of Property Act, 1882 — Section 55(1)(a), 55(6), 55(6)

Citation : (1996) 3 GLR 536

Hon'ble Judges : H.L. Gokhale, J

Bench : Single Bench

Judgement

H.L. Gokhale, J.—The appellant herein has filed this Appeal being aggrieved by the order passed by the learned Judge of the City Civil Court, Ahmedabad, below application for interim injunction (Exhibit 5) in Civil Suit No. 4673 of 1995 rejecting the application. The respondent herein is a Government company registered under the Companies Act. The Gujarat Closed Textile Undertakings (Nationalisation) Act, 1986 ("the Act" for brevity) came into force on 8-11-1985. The suit properties originally belonged to New Swadeshi Mills of Ahmedabad Limited. The same came to be vested in the Gujarat Government and then in the respondent-Corporation immediately on the above Nationalisation Act coming into force. The respondent had invited offers for the sale of the suit land admeasuring 2,41,875 sq. metres. The respondent had taken over the said Mill in accordance with the provisions of the Act, since the Mill was in financial difficulties and now it is the respondent itself which is in financial difficulty. It is reported to be sick and proceedings for revival thereof are reported to be pending before the Board of Industrial Finance and Reconstruction. Amongst others, for this purpose as well, the sale of these lands was thought necessary and a tender was floated on 18th December 1991. The appellant gave an offer on 16th January 1992 and the same came to be accepted on 3rd September 1992. An agreement came to be arrived at between the parties on 28-9-1992 for the sale of these lands and the total agreed price was Rs. 3,25,00,000/-, spread over in different instalments thereof as stated in Clause 1 of the said agreement.

From this amount of Rs. 3,25,00,000/-, an amount of Rs. 3 lakhs was to be paid as earnest money and which accordingly paid by the appellant.

2. The appellant, in pursuance to the above agreement, submitted plans for development of this property to Ahmedabad Urban Development Authority ("the AUDA" for brevity) on 15th October, 1992. On 7th June 1993 the respondent informed the appellant that the revised plan submitted by the appellant's architects along with their letter dated 6th May 1993 had been approved by the AUDA vide its letter dated 4th June 1993. The respondent, therefore, sought the payment of sale price immediately. The appellant drew attention of the respondent by their letter dated 19th June 1993 and pointed out that whereas the area of the plot mentioned in the agreement was 2,41,875 square metres, what was being permitted for development was 2,21,187.71 square metres. It submitted that before proceeding further, the exact net area of the plot may be clarified so that the value of the plot can be determined accordingly and the payment of the instalments may be modified accordingly. The respondent informed the appellant that there is no change in the area of the plot though the built up area permitted for construction is 2,21,187.71 square metres and not the entire plot area. Further correspondence ensued between the parties and in view of the query of the appellant, the appellant was informed by the respondent by their letter dated 9/15th July 1993 that although a part of the total plot of the land was proposed to be taken over for a road as informed to the appellant earlier, it was not known when the road will be constructed and that the possession of the entire area will be given to the appellant and hence the question of revision of price does not arise. By its letter dated 29th July 1993, the appellant reverted back to the respondent and stated as follows:

In the meantime we are ready and willing to pay you the instalment of land price as per the terms of agreement for which the plans are approved. For the balance area of 12,126 sq. metres which is reserved for road, if you can confirm that for the said balance area if the plans are approved within two months by the competent authorities then we will pay you the land price for whole land area of 2,41,675 sq. metres and if such plans are not approved within two months for the balance area of 12,126 sq. metres then the said proportionate amount of the balance will be refunded back to us.

The respondent wrote back to the appellant by its letter dated 5th August 1993 stating that it was not the look out of the vendor to consider what would be the criteria or rules and regulations for passing of the plans for constructions. As far as the respondent is concerned possession of the whole plot area will be given in accordance with the earlier agreement. It was further stated that as and when any part of the plot is taken over, the appellant will get compensation in accordance with law. The respondent, therefore, demanded the payment of the balance amount. In reply to this letter the appellant reiterated that the appellant has shown its willingness to make payment towards the first instalment for the area sanctioned by the AUDA. No such payment was, however, made. The

respondent ultimately gave a final notice dated 21st August 1993 calling upon the appellant to make payment of the balance amount within 30 days. The said payment was not made and on 6th December 1993, the respondent terminated the earlier referred agreement dated 28th September 1992.

3. Much later, i.e., in July/August 1995, the respondent decided to float another tender for the sale of this property. An advertisement was given in Gujarati daily - Sandesh, Ahmedabad dated 6th August 1995; and in Times of India and Indian Express, published from Bombay, on 5th August 1995 and 8th August 1995 respectively and also in Bombay Samachar, a Gujarati newspaper on 21st August 1995. Sensing that the respondent was likely to take further steps, the appellant filed the present suit being Civil Suit No. 4673 of 1995 which came to be filed on 12th September 1995 for specific performance of the agreement dated 28th September 1992 and in the alternative for the recovery of damages from the defendants. It is in that suit that an injunction was sought for restraining the respondent from selling, alienating, mortgaging or transferring the suit property.

4. The learned Judge of the City Civil Court, Ahmedabad after hearing the learned Counsels for the parties came to the conclusion that a case for injunction has not been made out. The learned Judge also held that there was substantial delay in moving the Court for equitable relief that was sought for and hence he dismissed the interim application by the impugned order dated 20th October 1995. Therefore, the present Appeal.

5. I have heard Shri B.N. Naik, Senior Counsel with Shri A.N. Bhatt, learned Advocate for the appellant as well as Shri B.R. Gupta with Shri Sanjay Gupta, learned Advocates for the respondent at length. Shri Naik for the appellant made various submissions, though his principle submission was based on the provisions of Section 55(1)(a) of the Transfer of Property Act read with the Division Bench judgment of the Bombay High Court rendered in Lallubhai Rupchand v. Mohanlal Sakarchand reported in 1995 Bom. LR 1041. Shri Naik submitted that this reduction in the plot area amounted to a material defect in the property or in the seller's title of which the appellant was not aware of and the appellant could not, in ordinary course, discover the same. He submitted that the fact was that an area to the tune of 12,126.60 square metres, that is, nearly 5 per cent of the total area was to go in the construction of the purposed road. This was known to the respondent and the respondent was expected to disclose this to the appellant and had they so disclosed it, the appellant would not have perhaps gone for the contract, or perhaps some other considerations would have prevailed. Shri Naik submitted that the respondent was duty bound to disclose this aspect and since the same was not done, there was a substantial breach on the part of the respondent as a seller. He submitted that "this omission to make such disclosures" on the part of the respondent would amount to a fraud u/s 55(6) of the Transfer of Property Act and also u/s 17(5) of the Indian Contract Act. Therefore, in his submission, in view of the provisions of Section 19 of the Contract Act, the appellant, whose consent was obtained by fraud or

misrepresentation, was entitled to insist that the contract shall be performed and that he shall be put into possession of the suit property.

6. Shri Naik contended that specific points have been raised in this behalf in the last part of paragraph 4 of the plaint. He submitted that the defendant had not disclosed and had failed to disclose to the plaintiff that out of total land area of 2,41,875 sq. metres only 2,29,748.40 sq. metres was available and 12,126 sq. metres was not available for development as the district panchayat road was purposed to pass on one border of the land. This information became available only from AUDA. Shri Naik contended that this submission has not been specifically dealt with in the defendant's reply. Shri Naik submitted that as far as construction of road is concerned, it was notified in the draft plan of the area way back on 23rd July 1981 and the plan had been finalised on 2nd November 1987. Although these documents were not on record of the trial Court, they were permitted to be tendered on record in this Court through Civil Application being moved by the appellants being Civil Application No. 6885 of 1985. The documents being public documents were taken on record. Then Shri Naik strongly relied upon the above referred Division Bench judgment and pressed the similarities into service. In that matter a house was to be sold and that area had been proposed for land acquisition. This was not brought to the notice of the purchaser and Division Bench of the Bombay High Court had held 1995 BLR 1041 (supra) that it was a material defect in the property as well as in the title of the party concerned. The Court observed therein as follows:

A buyer of immovable property is not bound to complete the sale if there are defects in the property which are material and latent that is to say, not discoverable by the exercise of ordinary care, or if the title to the property is not free from reasonable doubt.

Shri Naik also relied upon the judgments rendered in the case of *Rutherford v. Acton - Adams* AIR 1915 PC 113; *Vijay Kumar Gupta Vs. Mahi Pal and another*, in support of his submission that in these circumstances there was no fault on the part of the appellant in taking the stand that they had taken and that their claim for specific performance was justified and an injunction was necessary.

7. Shri Gupta, learned Counsel for the respondent on the other hand submitted that as far as respondent-Corporation is concerned, the suit property came to be taken over by the respondent in 1986 and so it was submitted that assuming that the notification of 1981 is to be looked into, the respondent was not in the know thereof and of the subsequent finalisation of the plan in the year 1987. As regards the relevant gazette notification of 1987 which was produced by the appellant, it showed finalisation of plan and since there was no modification from what was originally proposed in 1981 there was no separate specific mention of the suit property in the notification of 1987 so as to attract one's attention and hence there was no occasion for the respondent to come to know that such a road was going to come into existence covering one side of the suit property. It was submitted by Shri Gupta that in any case it cannot be said that there was

any defect in seller's title. The respondent owned the entire property. It was being handed over to the appellant. Besides, a part of the area was proposed to go in road widening and it cannot be said to be a material defect in the property. The development plans and the construction rules often require a reduction from the area wherein the construction is to be effected but that cannot be construed as a material defect in the property. In any case, he submitted that for the circumstances stated above, it could not be said that the respondent was aware of these defects. The maxim of "buyer beware" requires the appellant also to take "ordinary care" which even Section 55(I)(a) of Transfer of Property Act requires it to exercise while going for such a transaction. He, therefore, states that Section 55(I)(a) could not be attracted in a one-sided manner against the respondent. In my view the submission of Shri Gupta is well taken and the respondent-Corporation cannot be faulted for not disclosing something which could not be said to have been known to them at the relevant time. Besides, it cannot be said that the appellant would not have known this by due diligence. Apart therefrom it cannot be said that it amounted to any defect in the title or material defect in the property. The Division Bench Judgment of the Bombay High Court relied upon by Shri Naik dealt with a case where the acquisition notification under Land Acquisition Act was known to the party concerned and not disclosing the same would certainly amount to a material defect. In the instant case, it cannot be said that there is any such error on the part of the respondent-Corporation.

8. Even so, in any case, inasmuch as this contract was terminated on 6th December 1993, it was expected of the appellant to move for specific performance at the earliest, if they were serious about the same. The appellants certainly cannot be non-suited on the ground of limitation inasmuch as their suit is within time. However, when it comes to grant of equitable relief when the suit is filed after such a lapse of time, it cannot be said that the remedy of interim injunction was the necessary remedy and there was no other remedy available to the party concerned in this behalf. Shri Gupta relied upon the Apex Court judgment rendered in Dalpat Kumar and another Vs. Prahlad Singh and others, thereof the Courts are cautioned and required to exercise sound judicial discretion. They are required to find out that no other remedy is available to the party concerned and then as stated by the Honourable Supreme Court (and again relied upon by Shri Gupta) in para 20 of the judgment of the Apex Court rendered in State of Maharashtra Vs. Digambar, ; for approaching a Court of equity, the blameworthy conduct of a person approaching a Court of equity, for obtaining discretionary relief disentitles him for grant of such relief. Para 20 of the above judgment reads as under:

Laches or undue delay, the blameworthy conduct of a person in approaching a Court of equity in England for obtaining discretionary relief which disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, long ago, in Lindsay Petroleum Co. v. Hurd, thus:

Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.

9. Shri Naik submitted that the appellant was all throughout ready and willing to perform its part of the contract. But as provided in the agreement itself, the payments were to be made on certain specified dates starting from 28th September 1992 until 28th November 1993. Apart from paying the initial earnest money, the appellant has not paid any amount thereafter and certainly not after raising the dispute about the part of the land not being available to it. Shri Gupta submitted that this was so inspite of Clause 2 of the agreement which clearly provided as follows:

The area of the property is approximately 2,41,875 sq. mtrs. according to the vendor's records and the same shall be taken as correct and accepted by the purchaser. The price of the said property has been agreed to between the parties on a lumpsum basis without any reference to the said area and if the said area is ultimately found to be more or less the same shall not be a ground for any increase or decrease of price or for rescinding this agreement.

As stated above the respondent-Corporation is in financial difficulties and is in dire need of money. The respondent-Corporation had entered into long correspondence with the appellant from time to time and there was no positive response from the appellant in that behalf. In those circumstances, the respondent-Corporation had no option but to terminate the contract. The appellant has not moved immediately thereafter and was silent for nearly two years after termination of the contract. These facts are gross enough to disentitle the appellant to the remedy of injunction.

10. Shri Gupta, learned Counsel lastly drew my attention to the order passed by a learned single Judge of this Court (S.D. Shah, J.) in Appeal from Order No. 144 of 1994 and Civil Application No. 1990 of 1994 on 7/8/11th July, 1994. That was a matter concerning another plot of the land, between the same parties wherein arbitration was sought for as well as an injunction before the City Civil Court, Ahmedabad. The same having been declined, the aforesaid Appeal had been preferred and the Appeal came to be dismissed by the above judgment. In that

judgment while dealing with the balance of convenience between the parties, the learned single Judge observed in para 24 as follows:

It shall have to be stated at the outset that respondent-defendant Corporation is a State owned company. In fact, under the provisions of Gujarat Closed Textile Undertakings (Nationalisation) Act, 1986, assets of various closed textile units are vested in respondent-defendant Corporation. When any closed textile unit is found to be non-viable economically or even otherwise it decides to dispose of or sell away the assets of such unit, the income or realisation thereof is appropriated towards nursing or rejuvenating or reviving sick units and/or it is utilised for the purpose of providing assistance or backwages to a large class of workmen who were rendered unemployed or jobless because of closure of textile units. The immediate realisation of income or sale proceeds is, therefore, of primary importance to the respondent-defendant Corporation while, entering into agreement of sale with appellant-plaintiff.

I am in agreement with the learned single Judge. The Appeal arising from the above Order being SLP No. 14697 of 1994 has also been summarily dismissed by the Honourable Supreme Court on 12th September 1994.

10.1. In these circumstances, I am of the view that there is no error in the order passed by the learned Judge of the City Civil Court, Ahmedabad and hence this Appeal is dismissed. There will be no order as to costs. Although the Appeal is being dismissed, the observations herein are on the basis of the documents on record at the stage of interim application and when it comes to hearing of the suit, the learned Judge will certainly decide the matter on the basis of evidence that will be placed before him and will not be influenced by these observations if the same have no bearing on the evidence produced before him. Shri Naik, learned Counsel for the appellant requests for early disposal of the said suit. The request is granted. The parties will be at liberty to apply to the learned Judge for an early date of hearing and the learned Judge will try to fix up the same at the earliest and endeavour to dispose it of preferably by the end of July 1996.

11. A Civil Application for stay had been moved in this Appeal and it having been heard on 27th November 1995, the matter was adjourned to 8th December 1995, i.e., today. Shri Gupta had made a statement therein that the opponents will not create any third party rights in the property in question in the meanwhile. Shri Naik requests that the said statement be continued. Shri Gupta states that he has no instructions to continue the statement any further. The respondent is hereby relieved of the said commitment and will not be bound thereby any longer.