

(2005) 07 DEL CK 0137
In the Delhi High Court
Case No : CS (OS) 826 of 2004

Y.S. Manchanda

APPELLANT

Vs

Nand Singh, Jasbir Singh, Gurvinder Singh and Mrs. Manjeet Kaur

RESPONDENT

Date of Decision : 28-07-2005

Acts Referred:

Citation : (2005) 07 DEL CK 0137

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : S.C. Nigam, for the Appellant; G.L. Rawal and Kuljeet Rawal, for the Respondent

Judgement

Madan B. Lokur, J.—The plaintiff has filed an injunction application being is No. 4832/2004 seeking an ad interim injunction restraining the Defendants from transferring, alienating, parting with or creating any third party interest in the suit property bearing No. W-144, Greater Kailash Part-I, New Delhi and from letting out any portion of the suit property for commercial use.

2. The parties had entered into an Agreement to Sell on 17th December, 2003 in respect of the suit property.

3. The plaintiff paid a sum of Rs. 30 lakhs to the Defendants as earnest money. The balance amount was required to be paid by the plaintiff within 90 days and in default thereof the plaintiff was to pay interest @ 18% per annum on the sale price. The total payment was to be made by the plaintiff, in any case, within 180 days from the date of the Agreement failing which the earnest money of Rs. 30 lakhs would be forfeited. On the other hand, if the Defendants failed or refused to abide by the terms and conditions of the Agreement or to avoid the sale, then the plaintiff was entitled to receive double the amount of earnest money, that is, a sum of Rs. 60 lakhs.

4. As one would expect, the Agreement did not mature, which led to the plaintiff

filing a suit for specific performance of the Agreement dated 17th December, 2003. This suit was filed on 3rd August, 2004 and an interim injunction was prayed for, as mentioned above.

5. It was submitted by learned counsel for the plaintiff that the Defendants had misled his client in as much as although clause 3 of the Agreement dated 17th December, 2003 mentions that the suit property is free from all kinds of encumbrances, in fact it was found that the suit property was mortgaged with the Punjab National Bank. To make matters worse, after the Defendants received the earnest money, they made major changes in the construction on the suit property with the intention of putting it to commercial use. The character of the construction on the suit property was changed by the Defendants to the detriment of the plaintiff.

6. In response, it was submitted by learned counsel for the Defendants that even if it is assumed that the suit property was mortgaged with the Punjab National Bank, the mortgage was redeemed on 15th January, 2003, which is within one month of signing the Agreement between the parties. No disadvantage has been caused to the plaintiff in this regard because there was still sufficient time for the plaintiff to make the balance payment to the Defendants in terms of the Agreement dated 17th December, 2003. As regards changes made in the construction, learned counsel for the Defendants denied the same.

7. For the purposes of deciding this application, it is necessary for me to only look at the terms of the Agreement so that the interest of both the parties can be secured in accordance with the Agreement. Admittedly, the Defendants are in possession of the suit property and are enjoying its usufruct.

8. The Agreement dated 17th December, 2003 makes it clear that the liability of the Defendants, in case they fail to abide by the terms of the Agreement would be up to a maximum of Rs. 60 lakhs. If it is assumed, Therefore, that the Agreement dated 17th December, 2003 cannot be specifically performed, all that the Defendants would be liable to pay to the plaintiff is a sum of Rs. 60 lakhs, that is, Rs. 30 lakhs more than what the Defendants have already received from the plaintiff. On the other hand, the liability of the plaintiff, in case the suit is decreed would be that the sum of Rs. 30 lakhs, which is already lying with the Defendants, would be forfeited by the Defendants.

9. In *Dadarao and Anr. v. Ramarao and Ors.* (1999) 8 SCC 426, the Supreme Court considered a situation where the seller refuses to sell or the purchaser refuses to buy the property in accordance with an agreement entered into between them. In that case, the Supreme Court looked at the terms of the agreement between the parties and held that the defendants therein would not be obliged to complete the sale transaction and the plaintiff therein would only be entitled to the benefit of the penalty clause in the agreement. It was held in paragraph 7 of the Report as follows: -

"7. If the agreement had not stipulated as to what is to happen in the event of

the sale not going through, then perhaps the plaintiff could have asked the court for a decree of specific performance but here the parties to the agreement had agreed that even if the seller did not want to execute the sale deed he would only be required to refund the amount of Rs. 1,000/- plus pay Rs. 500/- in addition thereto. There was thus no obligation on Balwantrao to complete the sale transaction."

10. Applying the view expressed by the Supreme Court to the facts of the present case, if the Agreement between the parties falls through, at best the plaintiff can only demand a sum of Rs. 60 lakhs from the Defendants and nothing more because this is what the Agreement between the parties says. Consequently, the only relief that can be granted to the plaintiff at this stage would be to secure his interest to the extent of Rs. 60 lakhs so that if the suit is eventually decreed, the plaintiff can recover his amount without much ado.

11. Therefore, while disposing of the injunction application, I would direct the Defendants to furnish a security for a sum of Rs. 60 lakhs to the satisfaction of the Registrar General of this Court within two months from today. The security will be valid or kept alive till the disposal of the suit and if the plaintiff succeeds in the suit, he will be entitled to encash the security to the extent of Rs. 60 lakhs.

12. The injunction application is disposed of in the above terms. Needless to say, any observation made in this order will not bind the parties during the trial of the case.