

Agarwal Developers Pvt Ltd Vs. M/S Icon Buildcon Pvt Ltd

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Court : Delhi

Decided On : Sep-03-2013

Judge : Reva Khetrapal

Appellant : Agarwal Developers Pvt Ltd

Respondent : M/S Icon Buildcon Pvt Ltd

Advocate for Def. : Mr. Ankit Jain

Advocate for Pet/Ap. : Mr. A. Maitri, Mr. Deepak Khosla

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + RFA(OS) 79/2013
AGARWAL DEVELOPERS PVT LTD Appellant Through: Mr. A. Maitri with Mr.
Deepak Khosla, Advocates. versus M/S ICON BUILDCON PVT LTD Through: %
..... Respondent Mr. Ankit Jain, Advocate. Date of Decision : September 03, 2013
CORAM: HON'BLE MS. JUSTICE REVA KHETRAPAL HON'BLE MS. JUSTICE
PRATIBHA RANI

JUDGMENT

(ORAL) : REVA KHETRAPAL, J.

1. The Appellant has filed the aforementioned appeal against the judgment and decree dated 30.1.2013 passed by the learned Single Judge in CS(OS)

No.2656/2008 whereby the suit of the Respondent under Order XXXVII of the Code of Civil Procedure for recovery of ` 4,05,67,347/- was decreed in favour of the Respondent and against the Appellant along with pendente lite and future interest @ 18% per annum from the date of its full realization.

2. The factual background in which the learned Single Judge passed the impugned order briefly delineated is that the Respondent/Plaintiff entered into three agreements to purchase land from the original owners whereunder a sum of ` 1,92,92,500/- was paid by the Respondent to the original owners/sellers through cheques at the rate of ` 1.50 crore per acre. The Appellant Company which develops land entered into an agreement with the Respondent on 24.2.2007 for the acquisition/purchase of the said land, subject matter of the three agreements with the original owners. After negotiations, the Appellant agreed to purchase the entire land for a sale consideration of ` 3,60,59,864/-, i.e., amount of ` 1,92,92,500/- plus profit calculated at the rate of ` 10 Lacs per acre. Pursuant to the said agreements entered into between the Appellant and the Respondent, the Appellant issued six cheques in favour of the Respondent aggregating to ` 3,60,59,864/-, all dated 24.2.2007 to the Respondent. The Appellant also took over the original documents which were handed over by the Respondent to the Appellant being the original agreements which were entered into between the Respondent and the recorded bhumidars. It transpired that all the six cheques deposited were returned unpaid by the bankers vide memos dated 1.3.2007, 8.3.2007 and 29.3.2007 on account of insufficiency of funds when the same were presented on the first occasion. However, when re- presented, the first cheque was returned on account of insufficiency of funds and the remaining five cheques were returned on account of payment having been stopped by the Appellant.

3. After considering the defences raised by the Appellant in its application seeking leave to defend, a learned Single Judge of this Court by a detailed order held the Appellant entitled to a conditional leave, subject to the Appellant depositing 50% of the principal amount in this Court within three months of the date of the order, i.e., April 20, 2012.

4. Aggrieved by the aforesaid judgment and order, the Appellant preferred an appeal to this Court, being FAO(OS) 278/2012, in which notice was issued to the Respondent on the limited aspect of reducing the amount to be deposited as a condition of leave. On 6.7.2012, the Division Bench modified the order of the learned Single Judge and to reduce the rigors of the order directed deposit of 25% of the principal amount as against 50% of the principal amount ordered to be deposited by the learned Single Judge.

5. Against both the aforesaid orders, a Special Leave Petition before the Honble Supreme Court was preferred by the Appellant, which was dismissed on 21.9.2012. No amount was deposited by the Appellant even after the dismissal of the Special Leave Petition. Instead, it was submitted on behalf of the Appellant before the Division Bench that the Appellant was not in a position to deposit even 25% of the principal amount claimed in the suit as its funds were locked in various immovable properties. The Appellant offered instead that the condition be substituted by the requirement of providing security of immovable property for the entire suit amount. The said request of the Appellant was rejected by the Division Bench on the ground that if the Appellant is possessed of sufficient funds to give security, then it can certainly arrange for the funds to be deposited in this Court as the amount to be deposited was stated to be in the range of less than ` 1 Crore and the Respondent claimed to be in possession of assets of over ` 6 Crores, albeit of a sister concern. The Division Bench thus disposed of the appeal and the interim application filed with the appeal on September 24, 2012 holding that in case the Appellant is able to deposit 25% of the principal amount within a period of one month from today, the impugned order will stand varied to that extent, failing which the consequences for not depositing the amount as a condition of leave would follow.

6. This led to the passing of the impugned order dated January 30, 2013 by the Learned Single Judge, the relevant extract whereof is reproduced hereinbelow: Admittedly, till date no amount has been deposited by the defendant. In fact, today Mr. Sanjay Manchanda, learned counsel for the defendant states that the defendant is willing to deposit the amount directed by the Division Bench within thirty days from today. However, this Court is of the view that it is not open

for it to vary the order passed by the Division Bench. Order 37 Rule 3(6)(b) reads as under: ORDER XXXVII. SUMMARY PROCEDURE xxxx xxxx xxxx xxxx 3. Procedure for the appearance of defendant xxxx xxxx xxxx xxxx (6) At the hearing of such summons for judgment: xxxx xxxx xxxx xxxx (b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security with the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or judge, the plaintiff shall be entitled to judgment forthwith. (emphasis supplied) Keeping in view the aforesaid facts and circumstances as well as mandate of law, this Court is of the opinion that it has no other option but to pass a judgment forthwith. Consequently, present suit is decreed for Rs. 4,05,67,347/- in favour of the plaintiff and against the defendant along with pendent lite and future interest @ 18% per annum from the date of its full realisation.

7. The sole submission made before us by the learned counsel for the Appellant is that the interpretation given by the learned Single Judge regarding Order XXXVII Rule (3)(6)(b) CPC is contrary to the law and consequently the impugned order is liable to be set aside. It is submitted that even in an ex parte case the Court is under an obligation to look into the merits of the case and then give an ex parte judgment. It is further contended that similarly in a case of bonafide requirement under the provisions of Delhi Rent Control Act, even if leave to defend is declined the Court is under an obligation to ascertain the bonafide requirement of the landlord on merits and then to pass an eviction order or dismiss the eviction petition.

8. We find the aforesaid contention of the Appellants counsel to be wholly misconceived. The provisions of Order XXXVII Rule 3(6)(b) envisage that on the failure of the Appellant to deposit the amount required to be deposited by it as a condition to the grant of leave to defend the suit, the Court has no other option but to pass a judgment forthwith. This is the clear mandate of law and we, therefore, find no merit in the contention of the Appellant that the interpretation given to Order XXXVII Rule 3(6)(b) is contrary to the law. Further, in our opinion, an order

passed in a summary suit under the provisions of Order XXXVII Rule 2 CPC cannot be equated to an ex parte order passed in an ordinary suit. As regards compliance with the provisions of Order XXXVII Rule 2, we find that the said aspect has been addressed by the learned Single Judge at length in his order dated April 20, 2012 and only after considering the same, the prayer of the Appellant for grant of unconditional leave to defend the suit was not acceded to by the learned Single Judge. An appeal filed from the order of the learned Single Judge was dismissed by the Division Bench, albeit the Division Bench was persuaded to reduce the rigors of the order by directing deposit of 25% of the principal amount as against 50% of the principal amount in terms of the order of the learned Single Judge. The Special Leave Petition filed by the Appellant against the order of the Division Bench of this Court was also dismissed during the pendency of the present Appeal.

9. We, therefore, find no merit in the present appeal, which is accordingly dismissed with costs. CM Nos.110047/2013 and 110048/2013 In view of the aforesaid, CM Nos.110047/2013 and 110048/2013 also stand disposed of. REVA KHETRAPAL JUDGE PRATIBHA RANI JUDGE September 03, 2013 km

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