

Rosetta Williams vs.capt. Vikrant Singh

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Court : Delhi

Decided On : Oct-24-2016

Appellant : Rosetta Williams

Respondent : Capt. Vikrant Singh

Judgement :

\$~22. * IN THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS) 2884/2015 % Judgment dated 24th October, 2016 ROSETTA WILLIAMS Plaintiff Through : Mr.Rohan Thawani and Mr.Anand Dagga, Advs. versus CAPT. VIKRANT SINGH CORAM: Through : Mr.Raj Kumar Rajput, Adv. Defendant HON'BLE MR. JUSTICE G.S.SISTANI G.S.SISTANI, J, (ORAL) I.A.No.1785/2016 1. Plaintiff has filed the present suit for recovery of Rs.1,64,06,000/- together with pendente lite interest at the rate of 12% per annum and further interest at the rate of 12% per annum from the date of decree till the date of actual payment.

2. Present application has been filed by defendant under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure seeking rejection of the plaint on the ground that the same is barred by limitation and also barred by res judicata as the disputes between the parties had arisen in the year 2011, which is evident from the fact that the defendant had filed a petition under Section 11(5) of the Arbitration and Conciliation Act in the High Court at Chandigarh for appointment of an Arbitrator.

3. Before the submissions of the counsel for the parties can be noticed some necessary facts, which led to the filing of the present suit, may be noticed.
4. As per the plaint, the plaintiff was desirous of setting up her own school for imparting quality education to children. Plaintiffs father late Sh.T.H. Williams wanted to assist the petitioner in setting up a school and, thus, set up a company known as M/s Roshni Consultancy Private Limited along with another person, namely, late Sh.S.A. Khan, who expired on 8.8.2010. In the course of search for a suitable location for setting up a school, in the month of May, 2008, the plaintiff had approached the defendant, who claimed himself to be the owner of the property situated at D-4/A-8 (NS-1107), DLF, Phase I, Gurgaon, Haryana, which was an empty shell building, without any finishing work. Pursuant to the discussions held on 8.7.2008 an agreement was signed between the plaintiff and M/s Roshni Consultants Private Limited through its Director, Sh.S.A. Khan, for the land measuring 9500 square feet comprising of basement, ground and first floor, besides front lawn, for a period of nine years. The rate of rent was initially fixed at Rs.2.50 lakhs per month which was to be increased in stages. The possession was handed over to the company. The plaintiff claims to have incurred Rs.120.00 lakhs towards fittings and fixtures, finishing, paving, interior work, etc. during the years 2008 till 2012 i.e. from taking over possession and till the time the possession was handed over to the defendant. A brief break up of the investment made have been detailed in para 9 of the plaint. The defendant resiled from this agreement on the ground that he would give on lease only the ground and first floor with lawn, excluding the basement. Thus, on 1.2.2009 an unregistered lease agreement was executed for 6500 square feet only and the rate of rent was fixed at Rs.1,80,000/-, per month, in view of the reduced area. The lease agreement was signed by Sh.S.A. Khan, who unfortunately died on 8.8.2010. On 12.7.2011, the plaintiff received a notice from the defendant the tenancy and vacation of the premises, which was duly replied to by the plaintiff. On 10.8.2011, the defendant sent a notice invoking the arbitration clause as per the agreement and nominated an Arbitrator. This notice was also replied to by the plaintiff. The defendant also lodged an FIR bearing no.196/2011 at Gurgaon against the plaintiff herein. The plaintiff then filed a Criminal M.M. no.2220/2012 before the Punjab and Haryana High Court at Chandigarh seeking quashing of FIR, however, the said petition is

stated to be dismissed as withdrawn based on the statement made by the IO that he have given a report under Section 169 Cr.P.C, which is to be considered by the Court.

5. Learned counsel for the applicant/defendant submits that the defendant had filed an application under Section 11 of the Arbitration and Conciliation Act before the High Court at Chandigarh praying for appointment of an Arbitrator. In the meanwhile, the plaintiff sent a notice to the defendant to take over the vacant possession of the premises on 20.4.2012, however, the defendant did not take come forward to take over the possession. On 24.8.2012 the High Court recorded the submission of the counsel of the plaintiff that the plaintiff had vacated the premises and was ready to hand over formal possession. It is contended by counsel for the appellant that at that stage the plaintiff did not seek leave of the Court to sue for damages. Pursuant to the directions passed by the Court, the defendant took over the possession of the premises. It is further contended that even as per the reading of the plaint, the suit is beyond limitation as it was filed on 21.9.2015.

6. Learned counsel for the plaintiff submits that the present plaint was filed well within the period of limitation i.e. on 24.8.2015. Initially the plaint filed was returned to enable the plaintiff to remove the objections and after the objections were removed the plaint was re-filed. Counsel for the plaintiff/non-applicant further submits that the cause of action arose on 31.8.2012. It is contended that as far as the second plea of the defendant is concerned, there was no occasion for the plaintiff to reserve her rights to claim damages, as the petition under Section 11 of the Arbitration and Conciliation Act was filed by the defendant/applicant and in the petition filed by the defendant, there was no occasion for the plaintiff herein who was a respondent to seek leave to sue for damages.

7. I have heard learned counsel for the parties and considered their rival submissions. The applicant seeks rejection of the plaint on two grounds (a) suit is filed beyond the period of limitation and (b) Leave under Order II Rule 2 of the Code of Civil Procedure not sought.

8. The record shows that the present suit was filed by the plaintiff firstly on 24.8.2015 vide Diary no.420823, which is evident from the original stamp of the Registry. Thus, it cannot be said that the suit is barred by time, however, since the plea of limitation has been urged by the defendant, an issue would be framed at the stage of framing of issues.

9. As far as the second objection raised by the defendant is concerned, in my view, since the petition under Section 11 of the Arbitration and Conciliation Act was instituted by the defendant, there was no occasion for the plaintiff herein, who was respondent in those proceedings, to seek leave of the Court to sue for damages. The second ground urged, also in my view, is misplaced.

10. The application is without any merit and the same is dismissed. CS(OS) 2884/2015 11. List the matter before Joint Registrar on 15.12.2016 for admission/denial of documents.

12. Learned before court for framing of issues on 1.2.2017, when parties shall bring suggested issues to Court. I.A. 1786/2016 (To supply coloured photo of plaintiff) Application stands dismissed as infructuous, as prayed. G.S.SISTANI, J
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