

Sh. Dinesh Kumar Dixit vs.delhi Development Authority

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Court : Delhi

Decided On : Apr-17-2017

Appellant : Sh. Dinesh Kumar Dixit

Respondent : Delhi Development Authority

Advocate for Def. : Ms. Isha Khanna, Mr. S.K. Sharma

Advocate for Pet/Ap. : Mr. Harish Malhotra, Mr. Amit Bhatia, Mr. Rajesh Bhatia

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RSA No.134/2014 + % SH. DINESH KUMAR DIXIT 17th April, 2017 Appellant Through: Mr. Harish Malhotra, Sr. Advocate with Mr. Amit Bhatia and Mr. Rajesh Bhatia, Advocates. DELHI DEVELOPMENT AUTHORITY versus Respondent Through: Ms. Isha Khanna, Advocate for Ms. Nidhi Raman, Advocate for DDA. Mr. S.K. Sharma, Advocate for LIC/proposed respondent. CORAM: HONBLE MR. JUSTICE VALMIKI J. MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) RSA No.134/2014 and C.M. Appl. Nos. 9165/2014 (for stay) & 3352/2015 (under Order XLI Rule 27 (a) & (b) read with Order XLII, Rule 1 CPC) 1. This Regular Second Appeal is filed by the appellant (plaintiff in the suit) under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugning the concurrent judgments of the courts below; of the Trial Court dated 19.1.2013 and the First Appellate Court dated RSA No.134/2014 Page 1 of 7 7.9.2013; whereby the suit of

the appellant/plaintiff filed against the respondent/defendant/Delhi Development Authority (DDA) was dismissed. By the suit the appellant/plaintiff has challenged the demand of Rs.1,47,983/- raised by the defendant. The demand letter for the sum of Rs.1,47,983/- was raised by the respondent/defendant on account of interest, maintenance charges and capitalized service charges as the appellant/plaintiff had failed to pay the balance amount due to the respondent/defendant and which was payable on account of allotment of the subject flat to the appellant/plaintiff being flat No.56, 4th Floor, Sector-19, Pocket-2, Dwarka, New Delhi.

2. When notice was issued in this RSA the following order was passed on 23.5.2014:-

"C.M. Nos.9166/2014 (condonation of delay in filing) & 9167/2014 (condonation of delay in re-filing) 1. filing and 90 days in re-filing the appeal is condoned. For the reasons stated in the application, delay of 21 days in C.M.s stand disposed of. + RSA No.134/2014 and C.M. No.9165/2014 (directions) 2. Counsel for the appellant states that the subject flat bearing No.56, 4th Floor, Sector-19, Pocket-2, Dwarka, New Delhi has yet not been allotted to anyone else. If that be so, counsel for the appellant states that appellant is now ready to deposit all the charges demanded by the DDA and which were disputed by the appellant/plaintiff in the Courts below. It is argued that once the charges can be paid, the appellant/plaintiff can be transferred the subject flat.

3. Accordingly, let notices be issued to the respondent, as per the admission of the appellant to pay all the charges claimed by the DDA, RSA No.134/2014 Page 2 of 7 on filing of process fee, both in the ordinary method as well as by registered post AD, returnable on 23rd July, 2014.

4. The respondent/defendant/DDA will bring in this Court the record with respect to the subject flat and especially the record as to whether the subject flat has been allotted to anyone else after cancellation of the rights of the appellant. Also, the respondent/defendant should not allot the subject flat to anyone else, if it has not already been done so. (underlining added) 3. Additional facts also showed that appellant/plaintiff had mortgaged the subject flat with LIC Housing Finance

Limited, and which being a necessary party accordingly vide order dated 15.7.2016 notice was issued to the LIC Housing Finance Limited by passing the following order:-

"1. The facts of the present case require that notice be issued to LIC Housing Finance Limited, Lakshmi Insurance Building, Asaf Ali Road, New Delhi inasmuch as there is an issue as to whether or not the subject flat was sold by the LIC to one Sh. Satender Singh under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). It is only the LIC Housing Finance Limited which will clarify this position and it will also have to file the entire record with it with respect to flat in question i.e Flat No.56, 4th Floor, Sector-19, Pocket-2, Dwarka, New Delhi.

2. Let notice be issued to the LIC Housing Finance Limited as per the present order on appellant filing the process fee both in the ordinary method as well as by registered AD post, returnable on 19th October, 2016.

3. Copy of this order to accompany the notice.

4. record/photocopy of the files with it with respect to the subject property. LIC Housing Finance Limited will the complete file 5. Respondent/DDA will, before the next date of hearing, conduct an inspection of the subject flat including the records of the property tax department in order to ascertain whether the subject flat is vacant or occupied, if occupied, by whom and if the property tax records are still in the name of DDA or there is no property tax record at all as to in whose name the property tax being assessed. Needful be done by the DDA positively within a period of eight weeks from today.

6. List on 19th October, 2016. RSA No.134/2014 Page 3 of 7 4. Pursuant to certain other orders passed by this Court respondent/defendant has calculated the charges which would be payable by the appellant/plaintiff as in February, 2016, in terms of its letter dated 5.2.2016, and the said letter reads as under:-

"Dated 5.2.2016 Reg. SFS Flat No.56, Sector - 19, Pocket- 2 , Dwarka (submission No.F177(380)97/SFS/DW/III/ To, Sh. Dinesh Kumar Dixit, R/o 368 A,

Gali No.12, West Guru Angad Nagar, Gurudwara Road, Laxmi Nagar, Delhi -92
Sub: of 3rd copy of Bank challan) Sir, With reference to order passed by Honble High Court, we have obtained report from Accounts Deptt. Regarding outstanding dues against SFS Flat No.56, Sector-19, Pocket-2, Dwarka. The following dues are outstanding against the said flat as per detail given as under:

1.

2.

3.

4. 5. Intt. on delay payment Restoration charges Maintenance Charges Cap. Service Charges Interest Total Rs. 31745.00 Rs. 20000.00 Rs. 81964.00 Rs. 14274.00 Rs. 397635.00 Rs. 545618.00 In addition to above, an NOC from LIC Housing Finance Ltd. is also required since the flat stands mortgaged to them. LIC Housing Finance Ltd. has conveyed that there is an outstanding amount of Rs.651457/- against your loan account. = = = = = Yours faithfully, Sd/- ASSTT. DIRECTOR (SFS)/PIO 5. The issue in the present case really is as regards the claim of the respondent/defendant for the disputed charges payable before the execution of the title documents in favour of the appellant/plaintiff. A related issue is that the dues of LIC Housing Finance Limited have to RSA No.134/2014 Page 4 of 7 be paid by the appellant/plaintiff and which will give No Objection Certificate (NOC) after payment of its charges, and only thereafter the respondent/defendant will execute the title documents of the suit property in favour of the appellant/plaintiff as also hand over actual vacant physical position.

6. Learned counsel for the respondent/defendant argues that respondent/defendant besides the amount of Rs.5,45,618/-, as stated in the letter dated 5.2.2016, would also be further liable to pay maintenance charges from February, 2016 till April, 2017 and respondent/defendant is also entitled to further interest on the amount of Rs.5,45,618/-.

7. I may note that as per the pleadings and evidence in the courts below the respondent/defendant is found to be charging an exorbitant rate of interest of 18%

per annum. The charges which are payable in terms of the respondents letter dated 5.2.2016 of Rs.5,45,618/- includes mostly the interest component and which is of Rs.3,97,635/-. I may note that the original price of the allotted flat in favour of the appellant/plaintiff was at Rs.9,76,752/-. I, therefore, really do not find any strength in the case of the respondent/defendant to ask for further interest at the rate of 18% per annum and considering RSA No.134/2014 Page 5 of 7 the rate of interest presently chargeable by nationalized banks, it is ordered that the appellant/plaintiff will be liable to pay to the respondent/defendant a sum of Rs.5,45,618/- along with interest at the rate of 9% per annum simple from 1.2.2016 till 30.6.2017 or an earlier date by which appellant/plaintiff will pay the aforesaid amount to the respondent/defendant. Appellant/plaintiff will also pay by 30.6.2017 maintenance charges to the respondent/defendant from February, 2016 to 30.6.2017, and which amount payable by the appellant/plaintiff will be communicated by the respondent/defendant to the appellant/plaintiff positively within two weeks from today.

8. Appellant/plaintiff will also clear the charges payable to LIC Housing Finance Limited, and on the charges of LIC Housing Finance Limited being cleared, LIC Housing Finance Limited will issue the necessary NOC in favour of the appellant/plaintiff so that the title documents of the suit property and its possession can be handed over to the appellant/plaintiff by the respondent/defendant.

9. Learned counsel for the appellant/plaintiff says that there is no FIR/complaint lodged against the officers of the respondent/defendant, and assuming there is an FIR such a complaint/ FIR will not be pursued as against any officers of the RSA No.134/2014 Page 6 of 7 respondent/defendant. It is stated on behalf of the appellant/plaintiff that really the FIR is against an imposter who impersonated the appellant/plaintiff and deposited the sum of Rs.1,47,983/- with the respondent/defendant.

10. In view of the above discussion, this RSA is allowed and disposed of by directing the appellant/plaintiff to pay the amount stated in the present judgment to the respondent/defendant on or before 30.6.2017. Appellant/plaintiff will also pay the necessary amount due to the LIC Housing Finance Limited and which will

issue NOC in favour of the appellant/plaintiff. Respondent/defendant on receipt of the amount from the appellant/plaintiff in terms of the present order on or before 30.6.2017 will within a period of four weeks thereafter positively execute the title documents of the suit property in favour of the appellant/plaintiff being flat No.56, 4th Floor, Sector-19, Pocket-2, Dwarka, New Delhi, and also simultaneously hand over the vacant physical possession of the suit property to the appellant/plaintiff at the time of execution of the title documents.

11. The appeal is allowed and disposed of accordingly, leaving the parties to bear their own costs. APRIL17 2017/ AK RSA No.134/2014 Page 7 of 7 VALMIKI J.

MEHTA, J

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