

Harish Kumar Bhalla vs.mannu Talwar

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Court : Delhi

Decided On : Apr-17-2018

Appellant : Harish Kumar Bhalla

Respondent : Mannu Talwar

Judgement :

\$~ * + IN THE HIGH COURT OF DELHI AT NEW DELHI CS(COMM) 22/2015
HARISH KUMAR BHALLA Plaintiff Through Ms. Shilpa Chohan, Advocate
versus MANNU TALWAR Defendant Through Mr. Raman Duggal with Mr.
Akshay Choudhary and Mr Arun Kumar Panwar, Advocates for Appellant in O.A.
No.21/2018 Reserved on :

21. t February, 2018 Date of Decision:

17. h April, 2018 % CORAM: HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN, J: I.A. 2434/2018 in I.A. 2433/2018 Allowed, subject to just exceptions. O.A. 21/2018 & I.A. 2433/2018 1. Present appeal has been filed challenging the order dated 30th January, 2018 passed by the Joint Registrar whereby the appellant's application being I.A. 11489/2016 under Order 1 Rule 10 CPC for impleadment was dismissed. The application being I.A. 2433/2018 has been filed seeking stay of the proceeding in the present suit. CS (COMM) 22/2015 Page 1 of 5 2. Learned counsel for the appellant/applicant stated that while

deciding the impleadment application, the learned Joint Registrar manifestly failed to appreciate that the appellant/applicant's direct interest was involved in the subject matter, i.e., Dwelling Unit No.3 (2nd Floor) of property bearing No.208, Sant Nagar, New Delhi - 110 065.

3. The relevant facts of the present case are that the respondent No.1/plaintiff (hereinafter referred to as "owner") has filed the present suit for possession, declaration and injunction with respect to Dwelling Unit No.3 (2nd Floor) of property bearing No.208, Sant Nagar, New Delhi - 110 065 against the respondent No.2/defendant (hereinafter referred to as "builder").

4. The owner had entered into a Collaboration Agreement dated 21st October, 2013 with the builder for construction of property bearing No.208, Sant Nagar, New Delhi - 110 065. In terms of the said agreement, the builder was allowed to sell one floor, in particular, the second floor, of the property after it was duly constructed. Pursuant to the said Collaboration Agreement, a Supplementary Agreement dated 8th April, 2014 was entered into between the owner and the builder in terms of which the builder had a right to take advance booking of the Dwelling unit No.3 (2nd Floor).

5. Learned counsel for the appellant/applicant contended that by virtue of the Collaboration Agreement dated 21st October, 2013 and the Supplementary Agreement dated 8th April, 2014, the builder entered into a Sale and Purchase Agreement (BAYANA) dated 16th October, 2014 with the appellant/applicant, in terms of which, the appellant/applicant had paid Rs. 1.52 crores to the builder for the sale of his share of second floor and therefore, the appellant/applicant being invested in the building has a direct interest in the building. CS (COMM) 22/2015 Page 2 of 5 6. He contended that the learned Joint Registrar had failed to appreciate that by way of prayer clause (E) of the suit, the plaintiff is seeking a direction from this Court to cancel the Sale and Purchase Agreement dated 16th October, 2014 executed between the builder and the appellant/applicant. The prayer clause (E) of the suit is reproduced hereinbelow:

"E. Pass the decree of Mandatory Injunction directing the Defendant to cancel the agreement or bookings if any received under the supplementary agreement

regarding the dwelling unit No.3/second floor of the property bearing No.208, Sant Nagar, New Delhi-110065

Learned counsel for the appellant/applicant lastly stated that the learned Joint Registrar manifestly failed to appreciate the law laid down by the Supreme Court in Ramesh Hirachand Kundamal Vs. Municipal Corporation of Greater Bombay and Ors., (1992) 2 SCC524 wherein it has been held as under:-

""The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally, that is, by curtailing his legal rights."

8. In the opinion of this Court, the Joint Registrar has correctly interpreted both the Supplementary Agreement dated 08th April, 2014 and the Sale and Purchase Agreement dated 16th October, 2014 and in particular CS (COMM) 22/2015 Page 3 of 5 Article 1 of the Supplementary Agreement and condition No.2 of the Sale and Purchase Agreement, which are reproduced hereinbelow:-

"Article 1 of the Supplementary Agreement "The contractor undertakes to bind the subsequent buyer with the terms and conditions of the Mother Agreement as well as the present Supplementary Agreement. The subsequent buyer or any concerned understands that they will not have privity of contract with the owner. The subsequent buyer or investor cannot sue the owner of the present property for enforcement of the terms of any agreement which contractor may have with the subsequent buyer/third party. In case the terms and conditions of any agreement between subsequent buyer/investor contradicts the terms and conditions of the Mother Agreement or the present Supplementary Agreement the same may be null and void not binding in any sense. the contractor and (emphasis supplied) Condition No.2 of the Sale and Purchase Agreement "THAT in case of any dispute, between the First Party (Builder) and Owner by any reason, in that

eventuality, the Second Party/Purchaser shall not be liable and responsible. And the amount already paid to the First Party (Builder) shall be refund in the Double of the said amounts to the Second Party/Purchaser alongwith all other damages thus suffered by the Second Party/Purchaser, in all respects."

(emphasis supplied) 9. The Joint Registrar has rightly held that in terms of Article 1 of the Supplementary Agreement, the appellant/applicant being the subsequent buyer could not create privity of contract with the owner and therefore no CS (COMM) 22/2015 Page 4 of 5 right of the appellant/applicant flows from this document against the owner. The Joint Registrar has also correctly held that the appellant/applicant in terms of condition no.2 of the Sale and Purchase Agreement has himself limited his remedy against the builder to the extent of recovery of double the amount of the money paid by him to the builder.

10. The learned Joint Registrar has further correctly opined that the appellant/applicant is neither a necessary party nor a proper party to the present suit, since the only relief available to the appellant/applicant is to sue the builder in a separate suit and that too for double the amount of the money paid by the appellant/applicant to the builder. Additionally, even if the prayer (E) of the suit is allowed and the Sale and Purchase Agreement dated 16th October, 2014 (BAYANA) is cancelled, the appellant/applicant's remedy against the builder will subsist and he shall be open to claim damages against the builder. Consequently, the present appeal and applications are dismissed. MANMOHAN, J APRIL17 2018
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