

Ratan Sharma vs.eashwar Sri Kumar & Anr

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Court : Delhi

Decided On : Jul-30-2018

Appellant : Ratan Sharma

Respondent : Eashwar Sri Kumar & Anr

Advocate for Def. : Mr. Yashpal Singh

Advocate for Pet/Ap. : Mr. Satyapal Singh

Judgement :

\$~ * + IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :13th July, 2018 Date of Decision:

30. h July, 2018 RATAN SHARMA O.M.P. 447/2010

... Petitioner

Through: Mr. Satyapal Singh, Advocate. (M:9811538496) EASHWAR SRI KUMAR & ANR versus

... RESPONDENTS

Through: Mr. Yashpal Singh, Advocate. CORAM: JUSTICE PRATHIBA M. SINGH Prathiba M. Singh, J.

JUDGMENT CRL.M.A.13336/2012 in O.M.P. 447/2010 1. A petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter, the Act) was filed by

the

... Petitioner

- Sh. Ratan Sharma (hereinafter, Petitioner) seeking enforcement of the Memorandum of Understanding (hereinafter MoU) dated 6th June, 2006. The said petition was filed by one Sh. Ramesh Choudhary claiming to be the authorized representative of the

... Petitioner

, vide GPA dated 25th March, 2010.

2. As per the

... Petitioner

, vide MoU dated 6th June, 2006, the

... RESPONDENTS

had agreed to sell property bearing no.201 in Block B-2, Safdarjung Enclave, New Delhi to the

... Petitioner

for a consideration of Rs.5.35 crores. According to the

... Petitioner

, he had paid a sum of Rs.1.25 crores as token money which was confirmed vide receipt dated 28th May, 2006. The token money was paid prior to execution of the MoU. According to the

... Petitioner

, the

... RESPONDENTS

had purchased the property which consisted of Basement, Ground Floor, First Floor and Second Floor vide four registered sale deeds O.M.P. 447/2010 Page 1 of 8 from separate owners.

3. At the time of entering into the MoU, it is the allegation of the

... Petitioner

that the Basement, Ground Floor and Second Floor of the suit property was occupied by a tenant through a registered lease deed dated 10th December, 2003 which was for a period of three years. At the time of entering into the MoU, the possession of the Second Floor was thus, given to the

... Petitioner

. Thereafter, the

... Petitioner

continued to request for execution of the sale deed of the remaining floors. However, the possession was not given and it is the case of the

... Petitioner

that the

... RESPONDENTS

expressed their inability to execute the sale deeds and offered to return back the sum of Rs.1.25 crores along with interest of Rs.20 lakhs i.e. total of Rs.1.45 crores. Accordingly, a sum of Rs.20 lakhs was paid back by the

... RESPONDENTS

on 27th March, 2008 and an amount of Rs.80 lakhs was paid to the

... Petitioner

on 28th March, 2008 by bank transfer. Thus, a total sum of Rs.1 crore was paid back to the

... Petitioner

and upon the payment of remaining amount of Rs.45 lakhs, the

... Petitioner

was to give back the possession of the Second Floor to the

... RESPONDENTS

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4. However, the

... Petitioner
states that the

... RESPONDENTS

again agreed to go ahead with the transaction and then he paid back the Rs. 1 crore. Bank statements to evidence this have been placed on record. In the meantime, without returning the Rs.45 lakhs, the

... RESPONDENTS

trespassed, broke open the locks of the Second Floor and took possession of the Second Floor. The

... Petitioner
s attorney filed a police complaint in respect of the alleged trespass. The

... Petitioner
relied on clause 15 of the MoU dated 6th June 2006, which is the arbitration clause and prayed for an injunction to secure the property and a restraint order from selling and alienating the said property. O.M.P. 447/2010 Page 2 of 8 An order of status quo was initially passed on 30th July, 2010. On 3rd January, 2011, the counsel for the

... Petitioner
who had initially filed the suit was discharged. On 20th January, 2012, this Court passed the following order: 1. Learned counsel for the petitioner wishes to withdraw present petition. Learned counsel for the respondents submits that petitioner has filed forged and fabricated documents and he has misled this Court into passing an interim order. Counsel for the respondents further submits that respondents may be granted liberty to take recourse to such remedies, which may be available to him in accordance with law against the petitioner.

2. Accordingly, petition stands dismissed as withdrawn. Liberty, as prayed for, is granted to the respondent. 5. Thus, the petition was dismissed as withdrawn but the

... RESPONDENTS

were granted liberty to file an application in respect of the forgery which was alleged by the

... RESPONDENTS

. The case of the Respondent in the reply to the Section 9 petition was that the

... Petitioner

has completely misled the court. It was claimed by the

... RESPONDENTS

that the agreement was an oral agreement and there was no MoU dated 6th June, 2006 entered into between the parties. It was also alleged that the signatures on the documents did not belong to the

... RESPONDENTS

. In fact, it was claimed that the

... Petitioner

could not make the balance payment out of the agreed consideration of Rs.5.35 crores but was allowed to return the possession of the Second Floor with an understanding that when a new purchaser is found, the amount paid by the

... Petitioner

would be returned to him as a goodwill gesture. It was claimed that the

... Petitioner

had introduced a third party, Sh. Pratap Shankar Dawn to O.M.P. 447/2010 Page 3 of 8 the

... RESPONDENTS

and accordingly, the

... RESPONDENTS

had entered into an agreement to sell with the said person on 1st June, 2007 to sell the property for a sum of Rs.4.60 crores. This agreement dated 1st June, 2007

was also signed by the

... Petitioner

as a confirming party. It was agreed that out of the total consideration of Rs.4.60 crores, a sum of Rs.1.75 crores would be paid to the

... Petitioner

in lieu of the agreement dated 6th June, 2006 to get the said agreement discharged. Accordingly, Sh. Dawn paid a sum of Rs.1.30 crores and issued a cheque for Rs.45 lakhs to the

... Petitioner

. After receiving the payment, the

... Petitioner

handed over the Second Floor of the property to Sh. Dawn, though, the keys continued to remain with the

... RESPONDENTS

. Thus, as per the

... RESPONDENTS

, the agreement dated 6th June, 2006 was discharged with the execution of agreement dated 1st June, 2007.

6. Further, agreement dated 1st June, 2007 did not materialize and another agreement dated 30th August, 2007 was entered into between Sh. Dawn and the

... RESPONDENTS

wherein the sale consideration was increased from Rs.4.60 crores to Rs.5.10 crores. In that agreement, the payments made to the

... Petitioner

were to be duly adjusted. Disputes arose between Sh. Dawn and the

... RESPONDENTS

. Finally, on 4th April, 2008, sale deeds were executed by the

... RESPONDENTS

in favour of the mother and wife of Sh. Dawn for Ground Floor, Basement, First Floor and Second Floor, all of which were registered. Thus, as per the sale deeds dated 4th April, 2008, the title of the entire property was transferred to Sh. Dawn. A sum of Rs.35 lakhs had been held back by Sh. Dawn till his loan was sanctioned. However, after the execution of the sale deeds, the cheque for Rs.35 lakhs was not presented, despite the repeated requests of the

... RESPONDENTS

to Sh. Dawn. The Second Floor of the property continues to remain in the possession of the O.M.P. 447/2010 Page 4 of 8

... RESPONDENTS

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7. On 29th June, 2010, the

... RESPONDENTS

realized that Sh. Dawn had sold the entire property without paying Rs.35 lakhs and had broken the locks and took the possession on 29th June, 2010. A complaint before the Police was registered by the

... RESPONDENTS

. The entire reply thereafter goes into the dispute between Sh. Dawn and the

... RESPONDENTS

. The crux of the reply being that the transaction with the

... Petitioner

was already discharged and there were no outstanding.

8. After the petition was withdrawn by Sh. Ratan Sharma, an application has been filed being Crl. Misc. No.13336/2012 under Section 340 Cr.P.C. claiming that since the

... Petitioner

had obtained a status quo order on the basis of false and fabricated documents, a case has been made out for forwarding the complaint to the Magistrate for initiation of proceedings for forgery, perjury, and other sections against the

... Petitioner

and Sh. Ramesh Choudhary.

9. The allegations in this application are: i) that the signatures on the documents are forged and fabricated; ii) that there was no agreement in writing dated 6th June, 2006; iii) the fact that the petition was withdrawn, without demur, proves that the entire amount had been paid back by a separate transaction which was completely concealed; iv) that the

... Petitioner

concealed the fact that he was a confirming party to the agreement between the

... RESPONDENTS

and Sh. Dawn dated 1st June, 2007; v) that there were various over-writings which were made in the agreement which was filed in the court record; O.M.P. 447/2010 Page 5 of 8 vi) despite specific orders of the court directing the

... Petitioner

to produce the original agreement in the application, it was falsely alleged that a fire had taken place in which the original documents got destroyed and hence the documents were never produced; vii) there were discrepancies between the typed copies and the photocopies of the MoU, which were placed on record with the petition, which was deliberate. viii) that there were discrepancies in the power of attorney authorizing Sh. Ramesh Choudhary.

10. The attorney of the

... Petitioner

- Sh. Ramesh Chaudhary was repeatedly asked to appear before the court when he finally appeared. He claimed that all the documents were lost. He appeared only after bailable warrants were issued.

11. In response to the application, the attorney of the

... Petitioner

- Mr. Ramesh Choudhary stated that the petition was withdrawn only because the

... Petitioner

is based out of Guwahati and he was unable to proceed the matter. In the reply, it has been claimed that the averments as to the agreement dated 1st June, 2007 are not correct and that the payment of amount of Rs.1.75 crores is a false story. The

... RESPONDENTS

alleged that a fraud has been played on them by the

... Petitioner

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12. A perusal of the various documents and the allegations in the application and the reply show that the parties are dealing with huge sums of money and there is a serious issue raised in respect of the MoU dated 6th June, 2006. On the one hand, the

... Petitioner

argues that he has not been paid a sum of Rs.1.45 crores and on the other hand, the

... RESPONDENTS

stated that the

... Petitioner

had been paid a sum of Rs.1.75 crores. In the reply to the O.M.P. 447/2010 Page 6 of 8 application, the

... Petitioner

claims that the document dated 1st June, 2007 is forged and fabricated while the applicant is claiming that the agreement dated 6th June, 2006 is forged and fabricated. In the reply, the

... Petitioner

states that his signatures have been forged on the agreement dated 1st June, 2007.

13. It is correct that there were discrepancies in the signatures on the token money receipt dated 28th May, 2006 and the agreement dated 6th June, 2006. There are over writings on the power of attorney dated 25th March, 2010. The copy of the agreement filed with the petition does not contain page no.7 and the typed copy of the said agreement has an arbitration clause, which is missing in the copy of the MoU placed on record.

14. The law on Section 340 is well settled. In Chajoo Ram v. Radhey Shyam & Anr. (1971) 1 SCC774 the Supreme Court held as under: The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to star prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge. O.M.P. 447/2010 Page 7 of 8 15. Applying the settled law, to the facts of the present case, a perusal of the pleadings and the allegations made shows that both parties are disputing the agreements entered into as being forged and fabricated. There are criminal complaints already filed in respect of the trespass. The

... Petitioner

had filed a copy of the MoU on the basis of which the ad-interim order was passed, which is stated to be forged. Moreover, the transactions relied upon by the

... RESPONDENTS

to argue that the MoU stood discharged are also claimed to be forged. It is clear that both parties cannot be right and are not being truthful to the Court. The property is located in a prime area in Delhi. Several crores have been transacted between the parties and a third party Sh. Dawn, resulting in various disputes. For all these reasons, it is considered expedient and in the interest of justice that an enquiry be made into the above documents against the persons who are parties to the present suit, namely, Sh. Ratan Sharma and his power of attorney holder, Sh. Ramesh Choudhary, the Respondent Sh. Eashwar Sri Kumar and his wife, Smt. Lalita Sri Kumar, as also Sh. Pratap Shankar Dawn in respect of the transactions alleged to have been entered into dated 6th June, 2006 and 1st June, 2007 for property bearing No.201 in Block B-2, Safdarjung Enclave, New Delhi. The Magistrate i.e., District Judge, South East Distt., Saket Court Complex, New Delhi, shall conduct the enquiry and proceed in accordance with law.

16. Accordingly, the case record is remitted to the Magistrate concerned.

17. Application is disposed of. JULY30 2018/Rahul JUDGE PRATHIBA M. SINGH
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