

Naraln Singh Vs. M/S. Ansal Properties and Industries Ltd. and Another

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Court : Delhi

Decided On : Sep-22-1999

Reported in : 1999VIAD(Delhi)394

Judge : DR. M.K. Sharma, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17

Appeal No. : C.R. No. 959/1996

Appellant : Naraln Singh

Respondent : M/S. Ansal Properties and Industries Ltd. and Another

Advocate for Def. : Mr. H.L. Narula, ; Mr. Yakesh Anand and ; Mr. A.K. Vashisht

Advocate for Pet/Ap. : Mr. Naresh Sharma, Adv

Judgement :

ORDER

Dr. M.K. Sharma, J.

1. This revision petition has been preferred by the petitioner against the order dated 8.10.1996 passed by the Civil Judge, Delhi in Suit No. 6/1996 dismissing the application filed by the petitioner/plaintiff seeking for amendment of the plaint.

2. The plaintiff filed a suit for permanent injunction contending inter alias that the petitioner and respondent No. 2 booked a commercial flat bearing No. 8-H, measuring about 400 Sq. Ft. at the 8th floor at STATESMAN HOUSE at Barakhamba Road, New Delhi. It is alleged that the said flat was booked for a total consideration of Rs. 9,22,000/- and an agreement-cum allotment letter dated 5.7.1990 was issued. It is further alleged that they jointly paid Rs. 1 lacs i.e. Rs. 50,000/- each by the petitioner and respondent No. 2 through bank draft to respondent No. 1. It is alleged that the respondent No. 10 started threatening the petitioner to allot and transfer the flat in the name of respondent No. 2 only after completion of construction of the building and hence the aforesaid suit seeking a permanent from transferring or making allotment of the said commercial flat to any other person except in the joint name of the petitioner and respondent No. 1. The suit was contested by both the defendants.

3. An application came to be filed by the petitioner as plaintiff under Order 6 Rule 17 CPC praying for amendment of the plaint on the ground that certain new facts have come to their knowledge subsequent to the filing of the suit and sought to incorporate the same by way of amendment. A copy of the amendment application has been placed on record. The said amendment application has been placed on record. The said amendment application was opposed by the respondents and by the impugned order the trial court dismissed the same holding that the said amendments are not warranted at this stage.

4. I have heard the learned counsel appearing for the petitioner as also the counsel appearing for the respondents. The amendments sought to be incorporated have been set out in the application seeking for amendment. Originally the suit was filed seeking for only a permanent injunction. Now through the aforesaid amendment the petitioner seeks to convert the suit not only for permanent injunction but also a suit for declaration. It is also stated in the application that as against the application filed by the petitioner under Order 39 Rules 1 & 2 a reply has been filed by the respondent No. 2 alleging inter alias that the respondent No. 1 vide their letter dated 11.10.1990 cancelled the allotment of the flat and a cheque for Rs. 1 lac was delivered to him by defendant No. 1 and on the same date the respondent No. 2 gave a cheque for Rs. 50,000/- to the

petitioner as against his share for booking of the flat. It is stated that the aforesaid information and communication was not sent to the petitioner and the petitioner had not knowledge about the aforesaid cancellation of the allotment of the flat and in view thereof the amendment as sought for has become necessary. It is also submitted by the learned counsel appearing for the petitioner that even issues have not been framed in the suit and therefore, the trial is at the initial stage and the amendment as sought, for even if allowed, would not cause any prejudice to the respondents.

5. During the course of arguments by the learned counsel for the parties, my attention was drawn to various documents available on record. The respondents also filed certain additional documents on record. My attention was also drawn to the letter dated 11.10.1990 issued by respondent No. 1 to respondent No. 2. By the aforesaid letter the respondent No. 2 was informed that an amount of Rs. 90,000/- was outstanding against the booking of flat No. 8-H in STATESMAN HOUSE and that the arrears had not been cleared inspire of several reminders and accordingly, the allotment of the aforesaid flat stood cancelled as per clause 5(a) of the terms and conditions of allotment. Along with the aforesaid letter a cheque for Rs. 1 lacs was sent to respondent No. 2 towards full and final payment and also requesting for surrender of the original receipts and allotment letter issued. The aforesaid cheque for Rs. 1 lac which was returned by respondent No. 1 was deposited in the bank. It is also apparent from the record placed that a cheque for Rs. 50,000/- was issued by respondent No. 2 in favor of the petitioner which was encashed. The said amount of Rs. 50,000/- was stated to be towards payment of the share money of the petitioner for booking/allotment of the flat. It is however, contended by the counsel appearing for the petitioner that the petitioner had no knowledge that the aforesaid payment of Rs. 50,000/- was for return of the payment made by the petitioner as his share money for the aforesaid booking.

6. Be that as it may, my attention was also drawn to the legal notice issued on behalf of the petitioner calling upon the respondent No. 1 to hand over possession of the contracted flat. In reply to the aforesaid notice a letter was sent to the petitioner on 20.7.1991 wherein the respondent No. 1 specifically informed the petitioner that on account of the breach of the agreement committed by the

petitioner and respondent No. 2 the allotment of the flat was canceled. A rejoinder was also sent to the aforesaid reply by the petitioner contending inter alias that the respondent No. 1 was not justified in intimating the fact of cancellation of the contract only to respondent No. 2, for the petitioner and respondent No. 2 has jointly booked the said flat. From the aforesaid communications it is crystal clear that atleast on 16.9.1991 the petitioner had knowledge about the aforesaid cancellation of the flat. By the aforesaid amendment the petitioner sought to challenge the cancellation of the aforesaid flat as also seeking for a declaration that the aforesaid-booking of the flat is valid, legal and in existence.

7. During the course of their submissions the learned counsel for the respondents submitted that the aforesaid amendments as sought for are also barred by law of limitation. It was also submitted that allotment in favor of the joint allottees ceased to exists as the petitioner had received back the amount which was deposited at the time of allotment of the flat and any amendment allowed at this stage would amount to allowing the petitioner to withdraw the admissions made in the original suit, for the suit was filed in the year 1996, and the petitioner had knowledge even in the year 1991 that the allotment was cancelled.

8. I find force in the argument of the learned counsel appearing for the respondents, for the communications referred to above would clearly indicate that the petitioner had knowledge about the cancellation of booking of the flat atleast some time in the later part of 1991 which is corroborated by the letter of the petitioner dated 16.9.1991. The suit was filed in the year 1996 i.e after 5 years from the accrual of cause of action for the aforesaid relief. The suit, therefore, is barred by limitation, for the petitioner has failed to come to the court seeking for the aforesaid relief within the period of limitation of 3 years and therefore, any amendment allowed would defeat the valuable right of limitation accrued to the respondent. In this connection reference may be made to the decision of the Supreme Court in K. Raheja Construction Ltd. & Another v. Alliance Ministries & Others; reported in 59 (1995) DLT 3 (SC). It was held in the said case that having allowed the period of 7 years to elapse from the date of filing of the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963 any amendment on the grounds set out, would defeat the

valuable right of limitation accrued to the respondent. Reference may also be made to another decision of the Supreme Court in *Muni Lal v. The Oriental Fire & General Insurance Co. Ltd. & Another*; reported in 1 (1996) DLT 122 (SC), wherein the Supreme Court has held that granting of amendment of plaint seeking to introduce alternative relief of mandatory injunction for payment of specified amount is bad in law, for the alternative relief sought for was available to be asked for when the suit was filed but not made, and therefore, he could not be permitted to amend the plaint after the suit was barred by limitation during the pendency of the proceedings in the Appellate Court or the second Appellate Court.

9. The ratio of the aforesaid decisions squarely applies to the facts of the present case. In my considered opinion, the alternative relief seeking for declaration that the allotment is still valid and in existence, was a relief which was barred by limitation even at the time of filing of the suit itself. Now if the said amendments as sought for are allowed the sale would amount to defeating the valuable right of limitation which has accrued to the respondents by the passage of time. Accordingly, in my considered opinion, the trial court was justified in rejecting the application for amendment. The petition has no merit and is dismissed.