

Gobind Ram Vs. Gian Chand

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Court : Delhi

Decided On : Dec-20-1991

Reported in : 47(1992)DLT88

Judge : D.P. Wadhwa and; Dalveer Bhandari, JJ.

Appeal No. : Regular First Appeal No. 50 of 1977

Appellant : Gobind Ram

Respondent : Gian Chand

Advocate for Def. : Shri. R.L. Tandon

Advocate for Pet/Ap. : R.L. Tandon and; G.C. Lalwani, Advs

Judgement :

Dalveer Bhandari, J.

(1) This appeal is directed against the Judgment and Decree dated 6/10/1976 passed by the Sub-Judge, Delhi, decreeing the Suit of the plaintiff for specific performance of the contract.

(2) The brief facts which are necessary to dispose of the present appeal are set out as under:

ON 24.1.1973, defendant agreed to sell and the plaintiff agreed to purchase the quarter no. 3/4, Double storey, Lajpat Nagar IV, New Delhi, for a consideration of Rs. 16,000.00. The defendant received Rs. 1000.00 at the time of signing of the agreement and the plaintiff agreed to give another sum of Rs. 14,000.00 to the defendant before 31/03/1973 and another sum of Rs. 1000.00 at the time of registration of the sale deed. It was agreed between the parties that the sale deed would be executed within 15 days of the receipt of the

(3) The plaintiff filed a suit for specific performance of the contract on the ground that the defendant failed to execute the sale deed within the stipulated time. It was further averred that the defendant also failed to give the vacant possession of the quarter in question even though the plaintiff has always been ready and willing to pay the balance amount of Rs. 14,000.00 to the defendant. The plaintiff prayed that the agreement dated 24.1.1973 be enforced by means of specific performance. It appeared to the plaintiff that the defendant was backing out of the contract. Therefore, he had sent telegraphic notice on 26.3.1973. The telegraphic notice sent by the plaintiff is reproduced in toto as under:

'SALE quarter 3/4 Lajpat Nagar and also Telegram Dated 26.3.73 (.) you received earnest money 1000.00 now Rs. 14,000.00 ready receive and give possession before 31.3.73 intimate time and date place. Gulab Tulsyani Advocate for Gian Chand Son Santumal 4/11, Old Double Story Lajpat Nagar.'

(4) But in spite of such a specific telegraphic notice, the defendant failed to execute the sale deed and did not give possession to the plaintiff.

(5) On 28.3.1973, the plaintiff had sent another telegraphic letter calling upon the defendant to hand over the vacant possession of the property. Thereafter, the plaintiff had again sent a copy of the notice through postal A.D. registered letter to the defendant. The defendant chose not to reply to any of these notices. In pursuance of all these notices and oral requests eventually the defendant gave expression to his hidden feelings and desire and orally communicated to the plaintiff his unwillingness to sell the property. Immediately thereafter, on 14/04/1973, he had sent a letter to the plaintiff through his Counsel finally refusing to perform his part of the contract. The defendant had also threatened the plaintiff

to forfeit Rs. 1000.00 paid in advance to him at the time of the agreement. The defendant by his conduct had left no option for the plaintiff and as a last resort, the plaintiff had filed a suit for specific performance of the contract on 19.4.1973.

(6) In the suit, the plaintiff reproduced the terms and conditions of the agreement. In para 4 of the plaint, it has been categorically mentioned that on or about 23.3.1973, the plaintiff told the defendant that he was ready and willing to pay balance amount of Rs. 14,000.00 in cash and the defendant be ready to hand over vacant possession in time before 31/03/1973. The plaintiff again sent a telegraphic notice dated 26/03/1973 in which the plaintiff reiterated that he was ready and willing to pay the balance sum of Rs. 14 000.00. Again, on 28/03/1973, the plaintiff through his Counsel had sent another telegraphic notice calling upon the plaintiff to hand over vacant possession of the property on payment of Rs. 14,000.00. The defendant did not send any reply to any of the plaintiff's notices but orally mentioned that he was not willing to sell the property to the plaintiff.

(7) Though the defendant had virtually no defense in this case, but he chose to contest the suit and filed a written statement. In Para 3 of the written statement, the defendant had not denied having received Rs. 1000.00 as earnest money but without any foundation or basis mentioned that the plaintiff was not ready and willing to pay the remaining amount of Rs. 14,000.00. The credibility of the defense of the defendant became totally doubtful when in reply to para 5 of the plaint, he took a complete somersault and mentioned, 'It is denied that Rs. 1000.00 was paid as advance' and again thereafter mentions 'As the plaintiff committed the breach of the contract, the defendant was justified in forfeiting Rs. 1000.00 and revoking the agreement.' The defendant had taken the defense that the time was the essence of the contract and within the stipulated period, the plaintiff did not tender or pay Rs. 14000.00 as stipulated in the agreement. After going through the written statement of the defendant, it became clear that somehow he wanted to wriggle out of the agreement.

(8) After perusing the agreement, plaint and the written statement and hearing the Counsel, the learned judge of the trial Court framed the following issues:

'1. Whether the plaintiff was ready and willing to perform his part of the contract ?2. Whether the defendant has committed the breach of the contract ?3. Whether time was the essence of the contract. If not, to what effect ?4. Relief.'

(9) The learned trial Court has categorically come to the conclusion that the plaintiff had produced on record Ex. P-1 which is a copy of the statement of account of the plaintiff in Central Bank of India, Lajpat Nagar. The statement shows that the plaintiff had deposited a sum of Rs. 13,000.00 in the bank on 29/03/1973. According to the trial Court bonafides of the plaintiff is further established when he orally requested the defendant to perform his part of the contract and on his non-performance, he had sent several notices indicating that he was ready and willing to perform his part of the contract, therefore, please come forward to perform your part of the contract. The Court further came to the conclusion that the defendant did not act in a manner which would indicate that the plaintiff was not ready and willing to perform his part of the agreement and the defendant was eager to sell the quarter or to perform his part of the contract.

(10) The trial Court has held that as far as issue no. 2 is concerned, the defendant has admitted that he has not delivered the possession to the plaintiff in terms of the agreement. After examining the submission of both the defendant and the plaintiff, the trial Court came to the conclusion that the defendant had committed breach of the agreement.

(11) The learned trial Court while deciding the issue no. 3, 'whether time was the essence of the contract', has mentioned that the Counsel for the parties admitted that in case of immovable properties, time is usually not the essence of the contract. However, the parties may make time the essence of the contract by express agreement. The Court came to the conclusion that the parties never intended time to be the essence of the contract. It would be appropriate to note that the plaintiff has shown his willingness to perform his part of the agreement by sending telegraphic notices on 26.3.1973 and 28.3.1973 i.e. before the stipulated date of performance of the contract. therefore, even if time is taken as the essence of the contract, even then the suit filed by the plaintiff must succeed.

(12) Had the defendant been so keen to get the agreement executed then he would have taken steps to see that the plaintiff paid him the money. the defendant had not taken any step to deliver the possession to the plaintiff or that he had shifted to some other quarter or premises. The conduct of the defendant clearly shows that the wanted to back out of the agreement. The trial Court directed the plaintiff to deposit a sum of Rs. 15,000.00 in the Court within 30 days of the order. The Court further mentioned that in case the plaintiff failed to deposit .the said amount within the stipulated time, the suit shall stand dismissed. In pursuance of the Court's direction, the plaintiff had deposited the entire amount which is lying with the Court. Unfortunately, the defendant had made no efforts to get the balance consideration deposited in the fixed deposit with the bank. Otherwise, the amount would have multiplied,several-folds. We have carefully perused the agreement and statements of witnesses produced on behalf of the defendant and the plaintiff. In our opinion, the conclusion arrived at by the learned trial Court seems to be quite justified. According to us, the plaintiff has always been ready and willing to perform his part of the contract and the defendant wanted to back out from the same.

(13) . We have heard Shri G.C. Lalwani, Counsel for the plaintiff, and Shri R.L. Tandon, Counsel for the defendant at length. The matter was adjourned from time to time to see that even at this stage parties may settle their dispute and arrive at a suitable compromise. It seems that even with the best of efforts of the Counsel, the matter could not be mutually resolved and now we have been called upon to give our verdict.

(14) We are conscious of the fact that the defendant has been in possession of the said quarter for the last several decades and logical consequence of affirming the Judgment of the trial Court would mean considerable hardship tohim, at the same time the conduct of the defendant does not justify any further indulgence by the Court. We have no doubt that the defendant has tried to wriggle out of the contract between the parties because of the tremendous escalation in the prices of real estate properties all over the country and inDelhi, in particular in the last few years.

(15) In deciding the instant appeal, our endeavor would be to minimize hardship of the parties without deviating from the settled principles of law. On the basis of the agreement and other evidence on record, in our opinion the conclusion arrived at by the trial Court is irresistible. We affirm the Judgment passed by the trial Court dated 6.10.1976. We deem it appropriate to recall that during the course of negotiations Mr. Lalwani, on instructions from the plaintiff stated that to mitigate the hardship to the defendant and considering the fact that value of the property has increased in manifold, he was prepared to pay rupees one lakh more to the defendant. We consider this offer to be quite just and fair and will accept the same. Accordingly, we direct the plaintiff to deposit rupees one lakh with the Registrar of this Court within two months from today who in turn would deposit the amount in short term deposit in a nationalised bank. This amount would be paid to the defendant on his giving possession of the quarter in question to the plaintiff. We grant six months time to the defendant to give vacant possession of the quarter no. 3/4, Double storey, Lajpat Nagar IV, New Delhi to the plaintiff. We are granting long time to the defendant to vacate so that his family particularly children may not get disturbed or dislocated in the mid academic session. We further direct the defendant not to induct any other person or create third party rights or interests in the meanwhile. The appeal filed by the defendant is dismissed but in the peculiar facts and circumstances of the case, we leave the parties to bear their own costs.

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