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Deluxe Estates (P) Ltd. Vs. Delhi Development Authority

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Court : Delhi

Decided On : May-23-2003

Reported in : 2003VIAD(Delhi)181; 105(2003)DLT829; 2003(70)DRJ274

Judge : J.D. Kapoor, J.

Acts : Contract Act - Sections 74; Delhi Development Act - Sections 53B(1) and 53(B)(2); Interest Act - Sections 3; Code of Civil Procedure (CPC) - Sections 34

Appeal No. : Suit No. 1259/1984

Appellant : Deluxe Estates (P) Ltd.

Respondent : Delhi Development Authority

Advocate for Def. : Deepak Khadaria and ; Sangeeta Chandra, Advs.

Advocate for Pet/Ap. : B.B. Sahney, Sr. Adv. and; Ritesh Kumar, Adv

Judgement :

J.D. Kapoor, J.

1. This is a suit filed by the plaintiff for recovery of sum of Rs. 15,70,081.50 with pendentelite and future interest at the rate of 18% per annum on account of earnest money amounting to Rs. 10,51,250/- forfeited by the defendant and interest on the deposit of Rs. 5 lakhs retained by the defendant illegally from

15.3.82 to November 1982.

2. In brief the facts of the case are that the defendant DDA published an advertisement in the newspaper notifying that the auction would be conducted on 22.12.81 with respect to various plots namely 6 & 7, 4 & 5 etc. in local shopping Centre, New Friends Colony, New Delhi. With respects to plots No. 4 and 5, the area was s pecified as 135 sq. meter and total floor area was mentioned as 787.50 sq. meters with number of storeys mentioned as 'six plus basement'.

3. The plaintiff company submitted bid forms and gave bid of Rs. 42,05,000/-. The said bid was accepted by the defendant DDA. The plaintiff company deposited the earnest money of Rs. 10,51,250/-. Clause 2(vi) of the terms and conditions of auction required the plaintiff to deposit the balance amount within 15 days of the acceptance of the bid and letter dated 2.1.82 was issued to the plaintiff company asking it to deposit the balance amount of Rs. 31,53,750/- within 15 days. The plaintiff company was also required to deposit a sum of Rs. 1,05,125/- on account of yearly ground rent payable in advance along with other documents.

4. The plaintiff company failed to deposit the said amount within 15 days. Vide letter dated 15.1.82 the plaintiff company asked for extension of 3 months time to pay the entire amount on the ground of tight financial position in the market.

5. The said request was turned down by the defendant and final Notice was issued on 11.2.82 wherein it was specifically written to the plaintiff to make the payment within 7 days from the date of issue of final notice, failing which the bid shall be cancelled and the earnest money shall be forfeited on account of breach of terms and conditions without any further reference.

6. In response thereto, a letter dated 15.2.82 was written by the plaintiff again asking for the extension of three months with a request that the said extension may be granted with interest @ 18% per annum payable from the due date i.e. 17.1.1982 till the date of deposit. inspire of this letter, a letter dated 3.3.82 was issued by the defendant DDA whereby it asked the plaintiff to deposit the balance payment up to 15.3.82 along with interest @ 18% p.a from the due date i.e. 17.1.82 failing which the defendant shall be constrained to cancel the bid and

forfeit the Earnest Money without any further reference.

7. However, the plaintiff did not deposit the required balance amount and rather wrote a letter dated 14.3.82 to the defendant wherein the plaintiff asked for further extension of time and requested the defendant to accept the payment in Installments on the ground that the payments in the market had been blocked suddenly. Further, the plaintiff also deposited a sum of Rs. 5 lakhs as part payment towards the balance amount of Rs. 31,53,750/-. Another letter dated 18.3.82 was also written by the plaintiff to this effect. A letter dated 26.4.82 was written by the defendant to the plaintiff stating that the request of the plaintiff has not been acceded to though extension has been granted up to 30.4.1982. It was further stated in the said letter that in case the required amount is not paid by the stipulated time the defendant DDA shall be constrained to cancel the bid and forfeit the amount of Earnest Money without any further reference.

8. No amount was deposited by the plaintiff company and the defendant DDA cancelled the bid and forfeited the Earnest Money. However, the letter dated 15.5.82 sent by the defendant DDA through Registered Post in this regard came back unserved and subsequently the Notice of Cancellation dated 15.5.82 was pasted at the site of the plaintiff company. It was at this stage that the plaintiff discovered that ground water level was only 5-1/2 feet and no basement could be constructed except by use of highly expensive and extraordinary equipment and technical expertise. The plaintiff pointed out this fact to DDA though their letters dated 12.7.82 and 12.10.82 but the DDA did not come up with any response. Through these communications the plaintiff also stated that in case the defendant DDA were unable to confirm that a basement of normal type containing 8 1/2 feet height could not be constructed and there was no sub-soil water level then the amount of Rs. 15,51,250/- paid by the plaintiff be refunded with interest at the rate of 18% per annum. However, the DDA proceeded to reauction the plot in question.

9. Aggrieved by the acts of DDA in seeking reauction of the plot while retaining the aforesaid amount, the plaintiff filed a suit for permanent injunction in this court for restraining the DDA from re-auctioning the plot. However, on the statement of counsel for the DDA that DDA had cancelled the auction bid and forfeited the

amount of Earnest Money by letter dated 15.5.82, the suit was withdrawn by the plaintiff with liberty to file fresh suit.

10. The plaintiff has justified his claim against the DDA mainly on the ground that DDA was under a duty to act prudently and exercise reasonable care while making representations calculated to attract and induce prospective purchasers to make auction bids and even if it were to be assumed that the DDA was justified in cancelling the auction bid on 15.5.82 still the condition 2(4) of the terms and conditions of the auction held on 22.12.81 was illegal and unenforceable as being in the nature of a penalty and is hit by Section 74 of the Contract Act, and 25% of the bid price cannot by any standards be deemed to be a genuine pre-estimate of likely damages.

11. The suit has been resisted by the defendant by way of filing Written Statement on the following premises:-

(i) That as per Clause 2(4) of the terms and conditions the plaintiff company was required to deposit the balance amount within 15 days of the acceptance of terms and conditions which the plaintiff failed to comply with.

(ii) inspire of the fact that there was no provisions in the terms and conditions for extension of time, the DDA acceded to the request of the plaintiff and extended the term of deposit of remaining amount firstly up to 15.3.82 and thereafter up to 30.4.82. However, the plaintiff company still did not deposit the balance amount within extended period and the defendant was left with no other alternative than to cancel the bid.

(iii)The defendant was entitled to forfeit the Earnest Money in terms of Clause 2 (IV) of the terms and conditions of auction and thereforee, is not liable to refund the amount nor the plaintiff is entitled to the same.

(iv) The amount of Rs. 5 lakhs was deposited by the plaintiff on his own and again it was in view of this deposit that the plaintiff was given the extension to deposit the remaining amount up to 30.4.82. Since, the plaintiff failed to deposit the balance amount within the stipulated period, the amount of Rs. 5 lakhs was

refunded to him on 11.11.82 which was much prior to the service of legal notice served upon the defendant in this regard and as such the plaintiff is not entitled to any interest on the amount of Rs. 5 lakhs which he had deposited of his own.

(v) The following issues were framed vide order dated 4.8.86 for determination:-

1. Whether the suit is barred by Section 53B(1) of the Delhi Development Act?OPD

2. Whether the suit is within limitation? OPP

3. Whether Delhi Development Authority made any false representation to the plaintiff as alleged in para 13 of the plaintiff? OPP

4.If issue No. 3 is found in favor of the plaintiff, is the defendant entitled to forfeit any amount deposited by the plaintiff? OPD

5. What amount is refundable to the plaintiff? OPP

6. Whether the plaintiff is entitled to payment of interest? If so, at what rate, on what amount and for which period? OPP

7. Relief.

12. The plaintiff examined three witnesses namely PW 1 to 3 whereas defendant examined only one witness DW-1. Since the entire case depends upon the documents produced by both the parties, which are not in dispute, I deem unnecessary to refer to the testimony of the witnesses as they have nothing to add than the facts pleaded by both the parties. The main witness Mr. Raj Kumar Gupta is the Director of the plaintiff company and his deposition apart from the documents proved by him is mainly with regard to the misrepresentation of the DDA or concealment of the fact by DDA that area in question had subsoil water preventing the construction of basement by ordinary means. Documents proved by the parties summed up in chronological order are as under:-

i) Exhibit P-1 is the advertisement dated 12.9.1991 given by defendant for auction of plot in question.

ii) Exhibit D-1 is the bid form dated 26.12.1991 whereby plaintiff gave bid for Rs. 42,05000/- and deposited the earnest money of Rs. 10,51,250/-.

iii) Exhibit D-2 contains terms and conditions of the bid auction.

iv) Exhibit D-3 is the Architectural designs of the plot in question.

v) Exhibit D-5 is the communication to the plaintiff for acceptance of his bid and asking the plaintiff company to deposit the balance amount of Rs. 31,53,350/- with 15 days.

vi) Exhibit D-6 is the letter dated 15.1.1982 written by the plaintiff to defendant asking for extension of three months time.

vii) Exhibit D-7 is the final notice dated 11.2.1982 asking the plaintiff company to deposit the balance amount within seven days.

viii) Exhibit D-8 is the letter dated 15.2.1982 from the plaintiff company to the defendant-DDA asking for extension of time.

ix) Exhibit D-9 is another letter dated 27.2.1982 from the plaintiff company written to defendant-DDA to the same effect.

x) Exhibit D-10 is the letter dated 3.3.1982 written by defendant to plaintiff company asking the plaintiff company to deposit the balance amount up to 15.3.1982 along with interest @ 18% per annum from due date till payment is made.

xi) Exhibit D-11 is the letter dated 14.3.1982 whereby plaintiff has deposited sum of Rs. 5 lakhs and giving further schedule of future deposits and requesting DDA to allow him to deposit the payment in Installments on the ground that its payments in the market have blocked suddenly.

xii) Exhibit D-12 is another letter dated 30.3.1982 written by the plaintiff company to DDA to the same effect.

xiii) Exhibit D-12 is the letter dated 26.4.1982 written by defendant-DDA to the plaintiff company wherein it has been stated that the request to pay the balance amount of premium in Installments have not been acceded to. However, extension up to 30.4.1982 only was granted to pay the balance amount of premium along with interest @ 18% from due date i.e. 17.1.1982. Further para 5 of the said letter states that it is the final extension and no further representation in this regard will be entertained.

xiv) Exhibit P-10 is the letter written by the plaintiff to the defendant seeking short extension.

xv) Exhibit DW 1/A is the letter dated 15.5.1982 whereby plaintiff was informed that auction bid has been cancelled and earnest money has been forfeited under clause 4(2) of the terms and conditions of the auction. Admittedly letter sent through registered post came back unserved and subsequently the same was pasted at the site though the postal official who pasted it was not examined by the defendant.

xvi) Exhibit P-12 is the letter from the plaintiff to defendant whereby the plaintiff sought further time and assured that further payment will be affected by 15.8.1982.

xvii) Exhibit PW 1/E is the letter from the plaintiff to the defendant to the same effect.

xviii) Exhibit PW 1/8 is the letter dated 12.7.1982 is the letter written by the plaintiff to the defendant stating inter alias therein that DDA should confirm that the permitted height of basement is 10 1/2 feet and there was no subsoil water up to that height.

xix) Exhibit P-18 is the letter written by the plaintiff seeking confirmation as to the balance amount to be paid up to that date to the defendant.

xx) Exhibits P-13 and P-14 are the reminders dated 7.9.1982 and 16.9.1982 sent by the plaintiff pursuant to earlier letters addressed by it to the defendant-DDA

xxi) Exhibit P-15 is the letter dated 6.10.1982 is the letter addressed by the plaintiff to the defendant again seeking confirmation in relation to the depth of sub soil water wherein it was stated that in case such confirmation was not given the amount of Rs. 15,51,250/- paid by the plaintiff to the defendant will be refunded with interest @ 18% per annum.

13. After hearing the counsel for the parties at considerable length and according careful consideration to the documents, I have come to the following conclusion:-

Issue No. 1.

14. Section 53B(1) of the Delhi Development Act provides as under:-

'No suit shall be instituted against the Authority in respect of any act done or purporting to have been done in pursuance of the Act or rules or regulations there under until the expiry of 2 months after notice in writing left at the office of the Authority stating explicitly the cause of action, the nature of relief sought, the amount of compensation claimed and the name and place of residence of intending plaintiff and unless the plaintiff contains a statement that such notice has been so left.

15. Plaintiff has complied with this provision of law as the witness has proved Exhibit PW 1/L whereby the notice was duly receipted on 20.8.1983. This fact was confirmed by PW-1. The receipt of exhibit PW 1/L has been admitted by PW-1. This issue, thereforee, is decided in favor of the plaintiff and against the defendant.

Issue No. 2.

16. This issue also appears to have been raised for the sake of objection as period of limitation normally applicable to suit for refund of recovery of money is three years. The special limitation period of six months is applicable under Section 53B(2) of the act. This limitation applies only when the act complained of is an act done pursuant to any provision of the Delhi Development Act or rules or regulations there under.

17. The Division Bench of this Court has taken a view in Durga Chand Kaushish v. UOI & anr (1971) 2 Delhi 350 wherein the recovery of excess amount by DDA was challenged and the relief asked for in the plaint was for refund of amount recovered from the plaintiff in excess of what was due under the lease deed. It was held that the limitation prescribed under Section 53(B)(2) of the DDA Act was not applicable in such suits.

18. In the instant case, the plaintiff is asking for refund of money which according to him was retained illegally by the defendant and that suit relates to alleged misrepresentation. Section 53B(2) provides that special period of limitation has to be strictly construed and is attracted only when the defendant can be said to be under statutory obligation and not when it is exercising power under an enabling provision or not a provision which is enabling.

19. Since through the suit plaintiff has asked for refund of amount which according to him was illegally withheld, the period of three years was available to him under the said rules. Issue is decided accordingly.

ISSUES NO. 3,4,5 & 7

20. These issues are interlinked and are, thereforee, being taken up together. It appears that plaintiff after having failed to abide by the terms of auction and also having failed to pay the requisite balance amount not only within the prescribed period but also after having been shown the generosity by the DDA by extension of period and after bid was cancelled that second thought came to the plaintiff to come out with the defense that DDA had misrepresented to it that sub soil water level was higher in that area and thereforee basement could not be constructed. Since it has been admitted by PW-1 in the cross-examination that in the adjoining plots basements have been constructed, such a plea is not available to the plaintiff as till his bid was cancelled he did not raise any objection of the kind which he came to know about five months later when his earnest money was forfeited. After having accepted terms and conditions of the bid and having paid the earnest money and also having obtained extension of time to deposit the remaining balance, it was no more open to the plaintiff to raise such a defense that construction cost of basement in the area is 25-30% higher than other areas and

this was a sort of misrepresentation by DDA because one has to take steps to lower sub soil water level.

21. It is not the case that basement cannot be constructed in that area. Plaintiff himself has admitted the fact that basements have already been constructed in the area by other persons who have taken the land or purchased it. The plea raised by the plaintiff was available to him only in respect of damages which he was entitled to on account of extra expenses to be borne by the plaintiff in construction of basement. However, the defense that the plaintiff was entitled to back out from the concluded contract on the ground that it came to his knowledge later on that the construction of the cost of the basement was 25 to 30% higher than in other areas. Even otherwise this realisation dawned upon the plaintiff after he had already burnt his boats i.e he had failed to deposit the remaining balance inspire of the liberalness shown by the defendant in extending the time to deposit the same though it was specifically provided in terms of the bid that in case the remaining balance was not deposited within 15 days, earnest money would be forfeited.

22. Thus from any aspect we may hold up the matter but the fact remains that the defendant was within its right in terms of bid to forfeit the earnest money. If such pleas are allowed, the DDA respondent would not be able to sell or auction the plot in question as everybody would after availing the undue extension of time in not depositing the remaining balance will come up with one plea or the other for revocation of the concluded contract. Such actions on the part of the plaintiff have the tendency to scuttle the entire concept of sale of govt. property by way of auction. That is why time is always the essence of such kind of contracts. If it is not held to be the essence, the process of re-auction will never commence. Consequently all these issues are decided accordingly.

ISSUE NO. 6

23. Admittedly, the DDA accepted the amount of Rs. 5 lakhs towards part payment of the remaining balance on 14.3.82. It is admitted that the bid was cancelled on 15.5.82 on account of the failure of the plaintiff to make the payment of the entire remaining balance within stipulated period. It is not understandable as to why did the defendant retain this amount after it had cancelled the bid. Any retention of

such an amount beyond the period when the bid was cancelled was unauthorised, illegal and unwarranted. To expect the plaintiff to serve the DDA with the notice for the refund of such an amount which was unauthorisedly retained by DDA was misplaced and unwarranted. It was obligatory on the part of the DDA to enclose the cheque of Rs. 5 lakhs with the letter vide which the bid was cancelled. The forfeiture of the earnest money was legal but the retention of Rs 5 lakhs by the DDA beyond May 1982 was unauthorised, illegal and unwarranted. In such an eventuality where the refund is belated and is on account of the fault of the defendant, the plaintiff is entitled to a reasonable interest.

24. As regards the rate of interest, the learned counsel for plaintiff has placed reliance upon Oil and Natural Gas Commission v. M.C. Clelland Engineer's S.A. AIR 1994 (4) SCC 327 wherein the interest at the rate of 12% was granted as a compensation for delayed payment which also becomes part of the principal. In such like situation Section 3 of the Interest Act has no relevance and it is under the provisions of Section 34 of the CPC the court has the power to award the interest at reasonable rate.

25. In the instant case, the plaintiff was liable to pay interest at the rate of 18% for delayed payment and on the same analogy the plaintiff seeks interest at the rate of 18% for delayed payment by the DDA. Since in the instant case, 18% interest was agreed by the plaintiff by way of concluded contract, 18% interest on the delayed payment is not reasonable as it is by way of compensation that interest is being claimed. The same yardstick or same rate of interest cannot be allowed against the DDA as such an interest is not in terms of concluded contract between the parties.

26. The plaintiff is entitled to payment of reasonable interest which in this case may be 12% for the period from 15.5.82 till date of payment which was 11.11.82. However, the contention of the learned counsel for the plaintiff that since the interest being claimed by the plaintiff is by way of damages or compensation for delayed payment, the further interest i.e beyond the date of actual payment on the interest amount is highly misconceived and is difficult to accept. In such cases the period of retention by the defendant which was unauthorised, unwarranted and

illegal has to be reckoned for the purpose of granting compensation by way of interest.

27. In the result the suit is decreed for Rs. 30,000/- i.e the interest amount at the rate of 12% for the period from 15.5.82 to 11.11.82 with future interest at the rate of 12% from the date of decree till realization in case the amount is not paid within two weeks. Decree Sheet be drawn accordingly.

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