

Maharaj Krishan Vs. Iqbal Krishan

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Court : Delhi

Decided On : Feb-01-1996

Reported in : 1996IAD(Delhi)743; 61(1996)DLT693; 1996(36)DRJ502

Judge : Manmohan Sarin, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 23, Rule 3

Appeal No. : Interim Application No. 4053 of 1995 and Suit No. 954 of 1989

Appellant : Maharaj Krishan

Respondent : iqbal Krishan

Advocate for Def. : Mr. Dalip Singh

Advocate for Pet/Ap. : S. Vaidyalingam and; Dalip Singh, Advs

Judgement :

Manmohan Sarin, J.

(1) The defendant has moved the present application under Order Xxiii Rule 3 read with Section 151 Cpc, for recording adjustment of the suit vide a Writing/Memorandum of Understanding dated 3-11-1993. Defendant prays that the above compromise be recorded and suit be decreed in terms thereof. The execution of the Memorandum of Understanding dated 3-11-1993 between the

parties is admitted.

(2) The application is opposed by the plaintiff on number of grounds. However, the principal ground being that as the mutually acceptable buyer at the mutually acceptable price, was not found within the stipulated time, the understanding lapsed and stood exhausted . It is urged that the Memorandum of Understanding was required specifically to be destroyed.

(3) Let me recapitulate the facts in brief relevant for the disposal of the present application :-

(I)The plaintiff claiming himself to the owner of the House No.B-6 Jangpura Extension, New Delhi filed the above suit for possession of portion in use of the defendant also claiming charges for such use. The plaintiff and the defendant are real brothers. The pleadings in the suit were completed and issues framed. The case was listed for trial. It is not necessary to notice the other rival contentions of the parties except the fact that the parties had been negotiating a settlement and the suit had been listed for trial on 4th and 5th November, 1993, when it was got adjourned.

(II)On 28-2-1994, defendant had moved an application bearing I.A. No. 2207/94, wherein the he claimed that the suit stood adjusted by lawful agreement/compromise under Order Xxiii Rule 3 Cpc, vide the Memorandum of Understanding dated 3-11- 1993. The defendant sought the recording of the compromise and passing of a decree in terms thereof. The pleadings in the said application were concluded. The Advocate of the defendant was required to produce the copy of signed Memorandum of Understanding and which was so produced. On 7-4-1994, counsel for the defendant stated that at this stage, he does not press the application with a view to help parties to negotiate further and reach a settlement. The application was accordingly disposed of as not pressed.

(III)The present application bearing No. 64053/95 was thereafter moved. The defendant has prayed for recording of the compromise and passing of a decree in terms thereof.

(4) It would be appropriate to reproduce the clauses of the Memorandum of Understanding dated 3-2-1993. These are:-

(I)The above parties are currently parties in Suit No. 954/89 (Maharaj Kishan versus Iqbal Kishan) pending in the High Court of Delhi and currently scheduled to be listed for trial on 4th November, 1993. The said suit is a suit for possession of property No.B-6 Jangpura Extension, New Delhi filed by Mr. Maharaj Kishan claiming to be the owner of the entire property.

(II)The parties have agreed that the differences between them as reflected in the record of the said suit can be mutually and amicably resolved and accordingly they are agreed that subject to the said property being sold in the open market to a mutually acceptable buyer at a mutually acceptable price, then the sale consideration received therefor, shall be apportioned in the following manner:

(A)Sh. Maharaj Kishan - 64%

(B)Sh. Iqbal Kishan-36%-

(III)The parties are agreed that once a mutually acceptable buyer is located and mutually acceptable sale consideration is fixed with the said buyer, besides other formalities to be entered into with the buyer, the parties will move jointly an application in the above suit and obtain an order of Court regarding the respective shares in order that the sale transaction can be conveniently completed.

(IV)The parties however make clear that this understanding is subject to the sale of the property at the mutually acceptable market price. That this understanding is co-operative only till 30th of January, 1994. Only two copies of this Memorandum are being signed and will be retained by the respective advocates. If no settlement as contemplated herein takes place on or before the aforesaid date, the advocates shall destroy the copy retained by them. However, it will be open to both the parties to mutually and in writing instruct their advocates to extend the understanding for appropriate periods.

(5) I have heard Mr. Dalip Singh, learned counsel for the defendant in support of the application. Mr. Singh argued that the Memorandum of Understanding clearly

fixes the shares of the parties in the house property No. B-6 Jang Pura Extn. as 64% of the plaintiff and 36% of the defendant. The defendant according to Mr. Singh, has been admittedly in possession since allotment of the house in 1950. The defendant claims to be the co-owner. There was an earlier family settlement which the plaintiff has wrongfully chosen to deny. Further that the plaintiff did not have any money or resources to have built the house.

(6) It is not necessary to go into these contentions at this stage. The short question to be considered is whether the suit has been adjusted by a lawful agreement between the parties contained in the memorandum dated 3-11- 1993? Mr. Singh submitted that the plaintiff wants to resile from the agreed terms. According to him, the Finding of a mutually acceptable buyer was not an event collateral to the contract between the parties, fixing the share at 64% and 36% but a part of the contract itself. According to Mr. Singh, the essential feature of a contingent contract is that the collateral event to the contract was not fulfilled. He submitted that it was not a contingent contract. He stressed on the fact that there was also a provision in the Mou for extension of time to find a mutually acceptable buyer. Mr. Singh, relies on *F. Ranchoddas v. National Hirachand & Co.* Air 1949 Bom 356 and *Hamandrai Fulchand v. Pragdas Budhsen* Air 1923 Pc 54 in support of his contention that the time frame fixed dealt with the mode of performance and not with the question of obligation to perform the contract. He argued that holding the contract in the instant case to be a contingent one, would be to construe the words 'as and when buyer is received' in the case referred to Air 1923 Pc 54 supra as 'if and when received.' The words of the contract merely regulated the manner of performance and it did not convert it into a contingent contract. The crux of the argument being that the shares in the property had been fixed at 64% and 36%, which would not be contingent on the finding of a mutually acceptable buyer. The finding of buyer was for the purpose of dividing the sale consideration between the parties in the specified shares. The Court was empowered to extend the time to find a suitable buyer. The agreement was capable of being performed as soon as an acceptable buyer was found.

(7) The application was vehement ally opposed by Mr. S. Vaidyalingam who firstly contended that an earlier application namely I.A. 2207/94 having been disposed of

as not pressed, the present application was barred by rest judicata and not maintainable. I am not inclined to accept this submission of Mr. S.Vaidyalingam as I.A.2207/94 was not disposed of on merits. Counsel for the defendant had not pressed the same with a view to enable settlement between the parties who are brothers. Next Mr. S'.Vaidyalingam urged that the essential feature of the Memorandum of settlement was the sale of the property within the time bound frame, failing which the plaintiff would proceed with the suit The understanding was that if a mutually acceptable buyer purchased the property at the mutually acceptable price, on or before 30- 1-1994, then the sale consideration was to be so apportioned.(emphasis suppld) However, with a view to ensure that the said understanding was not misinterpreted or misused in any manner only two copies were signed, one retained by each of the advocates. No copy was handed over to either of the parties. It was specifically agreed that if no sale was concluded or completed by 30-1-1994, the advocates were to destroy the copy of understanding in their respective possession. However, it was upon the parties to mutually and in writing instruct their advocates to extend the date. There was neither a sale concluded nor the parties instructed the advocates in writing to extend the date. The understanding entered into accordingly lapsed. The plaintiffs counsel had even destroyed the copy with him. No compromise of any kind had entered into remained or existed. The present application was described as an attempt to delay the further progress of the suit.

(8) I find considerable force in the submission of Mr. Vaidyalingam. It is the admitted case of parties that neither a mutually acceptable buyer had been found nor price settled. This is a case which falls within Section 35 of the Contract Act i.e a contingent contract where under parties had fixed time for the subsequent uncertain event namely finding a mutually acceptable buyer and sale to him within a fixed time. Upon the said event not happening within the time fixed the contract became void. The Memorandum of Understanding has to be read in its entirety reliance cannot be placed on an individual clause in isolation. Upon a meaningful reading of Memorandum of Understanding, it is seen that the parties had agreed that subject to a mutually acceptable buyer at a mutually acceptable price being found and property being sold to him within specified time then the sale consideration was to be apportioned in the manner prescribed therein. Besides

there was specific agreement in terms of Clause 3 of the Memorandum, that the parties would move the Court jointly upon a mutually acceptable buyer being located and mutually acceptable sale consideration being fixed with the said buyer. It is not the case of the defendant that either a buyer has been located or mutually acceptable sale consideration was agreed to between the parties. Moreover, Clause 4 which is the last Clause of the agreement clearly provides 'that the understanding would be operative only up to 30-1-1994. Further that the advocates were required to destroy the understanding in case the settlement does not take place on or before the said date. The authorities cited by Mr. Dalip Singh do not advance his case and are of no help in the facts and circumstances of the present case. The words and language Used is clear and unequivocal. It admits only of one interpretation and i.e that intention of the parties was that the understanding was to lapse and exhaust itself in the event of settlement as contemplated not taking place. An interpretation contrary to the plain meaning of the words, would also have the effect of rendering clause Iv redundant cannot be given. It is a different matter that defendant may seek to urge that the Memorandum of Understanding is a piece of evidence to be considered in support of its claim with regard to the property being joint and acknowledgement of his share therein by the plaintiff. However, this would be matter during the trial and subject to a final decision in the suit. The Memorandum of Understanding cannot be put up as having adjusted the suit. In view of the foregoing discussion, the application is without merit and is dismissed.