

Prem Grover Vs. Balwant Singh

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Court : Delhi

Decided On : Oct-21-2005

Reported in : 126(2006)DLT575

Judge : Sanjay Kishan Kaul, J.

Appeal No. : IA 382/2005 in CS (OS) 55/2005

Appellant : Prem Grover

Respondent : Balwant Singh

Advocate for Def. : Jagjit Singh, Adv.

Advocate for Pet/Ap. : Ravi Gupta, Adv

Disposition : Application allowed

Judgement :

Sanjay Kishan Kaul, J.

1. The defendant is the owner of a four-storeyed property comprising of basement, ground floor, first floor and second floor with terrace along with servant quarter block situated at land admeasuring 2 bighas 3 bids was (equivalent to 2150 sq. yds.) forming part of khasra No. 305/2/03 (2-0) and 308/1/3 min (0-3). situated in Village Chattarpur, Tehsil Hauz Khas, New Delhi having purchased the same vide

Sale Deed dated 17.08.1979. A part of the property comprising of basement and ground floor is under the tenancy of Syndicate Bank as per Lease Deed dated 01.10.2001.

2. An agreement to sell was executed on 07.07.2004 by the defendant in favor of the plaintiff in respect of the property in question for a total consideration of Rs. 2.69 crores and the earnest money / advance was paid of Rs. 28 lakhs. The suit has been filed for specific performance of the said Agreement to Sell.

3. The plaintiff claims that the defendant was required to obtain a No Objection Certificate (NOC) from Tehsildar (Notification) in favor of the plaintiff or his nominee to complete the sale transaction and was required to put the plaintiff in physical possession of the property except the tenanted portion. The balance consideration was payable at the time of registration of the Sale Deed and the transaction had to be completed on or before 15th October, 2004. The plaintiff claims that he had informed the defendant that NOC should be obtained in favor of M/s. Encess Builders Pvt. Ltd. and had obtained the signatures of the plaintiff on the requisite application form for obtaining the NOC. The plaintiff approached the defendant some time in the end of September, 2004 and found that the NOC was not obtained. On the other hand, the plaintiff received a telegram dated 14.10.2004 trying to set up a case as if the defendant was ready to complete the transaction and for the plaintiff to reach the Office of Sub-Registrar, Mehrauli, New Delhi. This telegram is stated to have been dispatched on 14.10.2004 at about 3.00 p.m. and was received on 15.10.2004. The telegram was replied to by the plaintiff through counsel by reply dated 21.10.2004 expressing readiness and willingness of the plaintiff to complete the transaction and asking the NOC to be obtained.

4. In view of the dispute between the parties, one Mr. A.V. Dutta is stated to have acted as the Mediator who is also the attesting witness to the Agreement to Sell. However on 09.01.2005, the defendant is stated to have refused to complete the transaction and issued a legal notice dated 12.01.2005. Thus, the present suit.

5. In the Written Statement filed by the defendant, execution of the Agreement to Sell is not disputed. The defendant stated that the plaintiff was neither ready nor

willing nor capable of executing / complying with the terms and conditions of the Agreement. It was further stated in the Written Statement that the Mediator, Mr. A.V. Dutta mediated for cancellation of the sale transaction whereby the defendant was to return the earnest money and the defendant again has offered to repay the amount provided the Agreement to Sell is cancelled.

6. The dispute raised by the defendant is about the consideration for the property as it is the claim of the defendant that the sale consideration is Rs. 9.69 crores. Thus, the figure '2' should be read as '9' in the consideration even though in the words the figure is otherwise. The balance consideration after payment of earnest money also tallies with the sale consideration of Rs. 2.69 crores, but it is stated that the figures and words were filled in later and the defendant had signed the receipts and all other documents in blank. The defendant has signed in English, but claims he can only sign in English and does not understand English language. The defendant has specifically disputed that the plaintiff ever informed him about the name of the party in whose name the NOC had to be obtained. It is stated that the plaintiff is only an intermediary as would be apparent from the fact that the Sale Deed had to be executed in favor of the nominee of the plaintiff. The form is stated to have been delivered to the plaintiff on 07.07.2004 signed in blank by the defendant.

7. In order to appreciate the rival contentions for consideration of this application filed for interim relief, the documents exchanged between the parties will have to be considered and a prima facie view taken. It may be noticed that ad interim ex parte orders had been granted on 18.01.2005 on this application whereby status quo had been directed to be maintained till the next date of hearing.

8. A perusal of the Agreement to Sell dated 07.07.2004 shows that the document is signed on each of the pages in English by the defendant. Not only that wherever any portion is hand-written, there are counter signatures of both parties on the hand-written portion. The consideration has been set out as Rs. 2.69 crores both in figures and words.

9. Learned counsel for the defendant points out that the receipt, which has been executed, is also in similar terms. It is, in fact, in respect of the receipt that the plea

is being raised that the figure '2' should be read as '9'. This is so stated even though there are counter signatures where hand-written portions are there. Prima facie, it cannot be believed that the defendant did not know as to what figures had been filled up and signed the documents in blank. A reading of the receipt shows that the figure mentioned is Rs. 2.69 crores in words and figures, which tallies with the balance due shown after receipt of earnest money specified. The defendant has signed it in English. One of the witnesses is one Shri Karan Singh and learned counsel for the plaintiff stated that he is none other than the son of the defendant, who resides in Canada. The plea of the defendant, thus, cannot be accepted that the consideration mentioned was Rs. 9.69 crores and not Rs. 2.69 crores.

10. A perusal of the terms and conditions of the Agreement to Sell shows that the NOC had to be obtained by the defendant in favor of the plaintiff or his nominee. Thus, the plea of the defendant that the plaintiff is only an intermediary and, thus, the Agreement to Sell ought not to be specifically performed cannot be accepted for the reason that the defendant had agreed to obtain the NOC and execute the Sale Deed either in favor of the plaintiff or his nominee. The obligation to obtain the NOC has been clearly put on the defendant.

11. It may be stated that other than the notice, nothing has been pointed out by the plaintiff whereby any prior intimation was sent that the NOC should be obtained in favor of any party, though it is alleged that the same was informed. This aspect can only be examined once evidence is recorded. What is, however, material is that it is not the case of the defendant that he obtained NOC in the name of the plaintiff. In fact, the NOC has not been obtained at all. The defendant has, on the other hand, tried to make out a case as if the NOC had to be obtained by the plaintiff for which the defendant signed it and gave it to him. This is not the obligation under the Agreement and at least at this prima facie stage there cannot be a finding arrived at in favour of the defendant.

12. There is no doubt that the date for performance of the Sale Deed was fixed as 15.10.2004, but the balance consideration had to be paid at the stage of execution of the Sale Deed. No Sale Deed can be executed without obtaining the NOC from Tehsildar (notification). This NOC was to be obtained by the defendant and has

admittedly not been obtained. The notice issued vide telegram on 14.10.2004 at 15.02 hours was replied to by the plaintiff through counsel vide reply dated 21.10.2004. The plaintiff had expressed his readiness and willingness to comply with the terms and conditions of the Agreement to Sell and asking for the NOC to be obtained.

13. I am also unable to accept the plea of the defendant that by reason of some negotiation taking place through a Mediator, the Agreement to Sell had come to an end and the only question was refund of the amount. The negotiation was apparently for arriving at a settlement to complete the transaction. If it was otherwise, necessary evidence would have to be led for the said purpose.

14. In fact, to some extent, the stand of the defendant is contradictory in as much as in one of the places, he states that the plaintiff never informed him about the nominee's name in whose favor NOC had to be obtained, while in para 7 of the Written Statement, it is stated that the plaintiff obtained signatures of the defendant on a blank form and undertook to do the needful of his own. As noticed above, this is contrary to the terms of the Agreement to Sell. It is also relevant to note that in para of the Preliminary Objections of the Written Statement, the defendant has taken a plea that he has entered into an Agreement to Sell with a third-party. No details have been provided for the same leaving the allegation absolutely vague.

15. Learned counsel for the defendant sought to contend that the plaintiff should be asked to deposit the balance consideration in Court and if interest accrues on the same, it would ensure for the benefit of the successful party. The plaintiff was willing for the same but, on the other hand, asked for - (i) a corresponding obligation on the defendant to deposit the original title deeds in Court; (b) a direction that the rent which was being realised should go to the plaintiff; and (c) the possession should be enjoyed by the plaintiff. This was not acceptable to the defendant.

16. In my considered view, the plaintiff at this stage cannot be compelled to deposit the balance sale consideration in Court. These aspects will turn on the facts of each case. It is not in every case that the complete sale transaction must

be deposited by a party who claims specific performance without any corresponding obligation being performed by the defendant.

17. The plaintiff has established a prima facie case in his favor in view of the facts set out herein-above. It has to be considered as to what is to be the best interim arrangement during pendency of the suit since it is not the suit which is being decided at this stage. The status quo order protects the rights of both the parties as the defendant will continue to enjoy rental from the property and use and occupation of the vacant portion, while the property is protected against third-party interest so that if the plaintiff succeeds he can get the Agreement to Sell specifically enforced. The plaintiff has already paid the earnest money in terms of the Agreement to Sell and the balance consideration had to be paid only on execution of the Sale Deed, which was after the NOC was obtained by the defendant. In case third-party rights are permitted to be created, it would cause irreparable prejudice to the plaintiff and the balance of convenience is also in favor of the plaintiff. The defendant has made only a vague allegation about having created third-party interest, the details of which have not been disclosed. This especially so since the plaintiff had immediately replied to the defendant within 6 days of receipt of the telegram notice.

18. I am, thus, of the considered view that the interim order dated 18.01.2004 is liable to be made absolute during pendency of the suit. Ordered accordingly.

19. The application is accordingly allowed.

20. Needless to say that any observation made in this Order shall not in any manner affect the final adjudication of the suit.