

Express Towers Vs. Mohan Singh

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Court : Delhi

Decided On : Aug-22-2006

Reported in : 133(2006)DLT260

Judge : Anil Kumar, J.

Acts : [Income Tax Act, 1961](#) - Sections 269UL(3); Limitation Act - Schedule - Article 53; Code of Civil Procedure (CPC) - Sections 151 - Order 12, Rule 6 - Order 39, Rule 10

Appeal No. : IA No. 5912/2004 in CS(OS) 1578 of 2002

Appellant : Express Towers

Respondent : Mohan Singh

Advocate for Def. : H.L. Narula, Adv. for defendant Nos. 1 and 2

Advocate for Pet/Ap. : L.K. Garg, Adv

Judgement :

Anil Kumar, J.

1. This order shall dispose off plaintiffs' application under Order 12 Rule 6 read with Section 151 of Code of Civil Procedure for passing a decree of declaration and a decree of specific performance on the basis of admissions made by the

defendants.

2. The plaintiffs contended that an agreement to sell dated 21.5.1987 was entered into between the plaintiffs and Sh.Mohan Singh and Smt.Jeet Kaur, defendant Nos. 1 and 2 for the purchase of property No. B-7/118, Safdarjung Enclave Extension, New Delhi for a sale consideration of Rs. 23,50,000/- out of which Rs. 1 lakh was paid to defendant Nos. 1 and 2 at the time of entering into agreement to sell. It was asserted by the plaintiffs that the provision of Chapter XXC of [Income Tax Act, 1961](#) was applicable in respect of the purchase of the property. therefore, the plaintiffs and the defendants Nos. 1 and 2 filed necessary application on 27th May, 1987 in form No. 37(I) with the appropriate Income Tax authorities for 'No objection certificate' for sale of the property. However, on the application of the defendant Nos. 1 and 2, the Income Tax authorities instead of granting 'No objection certificate', passed an order dated 10.07.1987 for pre-emptive purchase of the property.

3. Against the said order of pre-emptive purchase of property, a civil writ petition No. 2275/87 was filed by the plaintiffs for quashing the order of Income Tax authorities dated 10.7.1987 for pre-emptive purchase of the property of defendant Nos. 1 and 2. By an interim order dated 26.8.1987, the Income Tax Authorities who had taken the possession of the property were directed to maintain the status quo and by another order dated 8th May, 1989 the Income Tax authorities were allowed to retain possession which was taken by them on 20th August, 1987.

4. Pursuant to the orders in the writ petition, the defendant Nos. 1 and 2 were directed to receive the balance sale consideration of Rs. 22,50,000/- from the appropriate authority/Central Government as Rs. 1 lakh had been paid by the plaintiffs to the defendant Nos. 1 and 2. It was further directed that the property will remain in possession of Income Tax department who had taken the possession on 20th August, 1987. Subsequently the writ petition filed by the plaintiffs was allowed by order dated 1st September, 1993 and the defendant Nos. 1 and 2 were allowed to take claim of interest before the Income Tax Authorities and the matter was remanded to the appropriate authority for fresh decision.

5. On remand by the Court to the Income Tax authorities for reconsideration, again a pre-emptive purchase order dated 28.5.1993 was passed which was again challenged by the plaintiffs by a civil writ petition No. 4357/93. The subsequent writ petition filed by plaintiffs was not challenged by defendants Nos. 1 and 2 as they had already had become entitled to receive the entire sale consideration. They did not appear before the Tax authorities to press their claim for interest.

6. The writ petition No. 4357/93 filed by the plaintiffs was allowed on 17.12.1997. The appeal filed by the Commissioner of Income tax was also dismissed by order dated 10th May, 2001. Though the Income Tax authorities had auctioned the property for about Rs. 78,10,000/- but by interim order dated 7th October, 1993 they were directed not to handover the possession of the property to the auction purchaser, Cement Corporation of India. Thereafter, plaintiffs made representations to the Tax authorities for issuance of 'No objection certificate' from 21st May, 2001 to 20th July, 2001 and thereafter filed another writ petition being CWP 5654 of 2001 which was also allowed by order dated 12th December, 2001 directing the Income Tax Authorities to give 'No objection certificate' to the petitioners. therefore, 'No objection certificate' was delivered to the plaintiff and amount of balance sale consideration of Rs. 22,50,000/ was paid to the defendant Nos. 1 and 2 and the vacant physical possession along with the original title deeds, sanction plan etc was handed over to the plaintiffs. 'No objection certificate' dated 28.12.2001 was issued under Chapter XXC of the Income Tax Act under Section 269UL(3) in favor of plaintiffs and defendant Nos. 1 and 2. The plaintiffs contended that under the agreement to sell, expenses of the sale deed, stamp duty, registration charges etc were to be borne by the plaintiffs. The defendant Nos. 1 and 2 had already received the entire sale consideration, Rs. 1 lakh on 21.5.1987 and Rs. 22,50,000/- on 7.8.1992.

7. The plaintiffs emphasized that the application of the defendant Nos. 1 and 2 for modifying the order dated 12th December, 2001 being CM No. 1404 of 2002 was dismissed on 5th February, 2002 and a review application against the dismissal of the application for modifying the order dated 12th December, 2001 being review application No. 2299 of 2002 was also dismissed on 16th March, 2002.

8. The plaintiffs contended that in the meantime it transpired that three sale deeds had been executed in respect of property. Sale deed dated 30th September, 1988 in favor of defendant No. 3 and sale deeds dated 18th September, 2000 and 22nd September, 2000 in favor of defendant Nos. 4 and 5. The plaintiffs asserted that the sale deeds dated 30.9.1988, 18.9.2000 and 22.9.2000 are forged and fictitious documents alleged to have been executed by defendants Nos. 3 and 5 and their attorney defendant No. 4 who have been proceeded ex-parte in the suit and have not appeared despite service of summons on them. The defendant Nos. 1 and 2 have also denied having executed the sale deeds in favor of defendants Nos. 3 and 5. It is also contended that the sale deeds could not have been registered in the office of the sub Registrar, Kapashera as the Safdarjung Enclave Extension where the property is situated does not lie in the jurisdiction of Sub Registrar, Kapashera.

9. The plaintiffs contended that pursuant to agreement dated 21st May, 1987 entire sale consideration has been paid, no objection certificate has also been granted by the Income Tax Authorities, the agreement has not been challenged by the Defendant Nos. 1 and 2 in various petitions filed against the Income Tax Authorities for grant of no objection certificate and the defendant Nos. 1 and 2 have not challenged the delivery of possession and documents pertaining to the property to the plaintiffs. It is therefore, contended that there is no impediment against execution of the sale deed by the defendant Nos. 1 and 2 in favor of plaintiffs, as earlier the only objection was that the 'No objection certificate' was not issued by the Tax authorities which has also been granted pursuant to order dated 12.12.2001 by the Income Tax authorities and prima facie the sale deeds dated 30th September, 1988; 18th September, 2000 and 22nd September, 2000 are forged and fabricated documents. It was stated that the registration number of Registrar of Document given on sale deed dated 12th December, 1988 shows another document in the record of the Registrar of Document. Another plea against the sale deed dated 30th September, 1988 taken by the plaintiffs is that the consideration of Rs. 2,00,000 shown in the said sale deed is just inadequate as even the agreement to sell in favor of the petitioner was for Rs. 23,50,000 and the property was auctioned by the Income Tax authorities for a consideration of Rs. 78,10,000 leading to inevitable inference that the said sale deed is forged and

fabricated. According to plaintiffs no reliance can be placed on this sale deed and other sale deeds as the defendant Nos. 1 and 2 never disclosed about them in various proceedings which were pending between the plaintiffs and the said defendants. Another assertion of the plaintiffs is that the sale deeds of the year 2000 stipulate that the possession was handed over to the transferee whereas the possession was with the income tax authorities which was handed over to the plaintiffs.

10. In these circumstances the assertion of the plaintiffs is that agreement to sell dated 21.5.1987 between the plaintiffs and defendant Nos. 1 and 2 is admitted and defendant Nos. 1 and 2 have received the entire sale consideration of Rs. 23,50,000/-. No objection certificate as is required from the Income Tax authorities has also been received and the physical possession and other necessary documents have also been given by the Income Tax authorities to the plaintiffs. Clarification sought by the defendants Nos. 1 and 2 to order dated 12.12.2001 and the review thereafter has also been dismissed. The sale deeds dated 30.9.1988, 18.9.2000 and 22.9.2000 are also forged and fictitious as detailed in the plaint and these defendants have been proceeded ex-parte and as plaintiffs were always ready and willing to perform their part of agreement and had deposited the entire sale consideration, therefore, a decree of specific performance be passed in their favor directing execution of sale deed of the property in their favor and for declaration that the sale deeds dated 30.9.1988, 18.9.2000 and 22.9.2000 are null and void.

11. The plaintiffs have relied on : 65(1997)DLT533 , Atma Ram Properties Pvt. Ltd. v. Air India to contend that there is no need to post the suit for trial if defense raised cannot be countenanced. The reliance has also been placed on : 65(1997)DLT22 , Surjit Singh v. H.N. Pahilaj (Deceased) through L.Rs. to contend that a decree can be passed under Order XII Rule 6 where liability is not denied but avoided on the pleas which are not valid and tenable. The learned Counsel for the plaintiff contended that the defendants are not entitled to lead any oral evidence against the terms of the written contract and placed reliance on : 1997IIIAD(Delhi)997 , R.N. Sachdeva v. Ram Lal Mahajan Charitable Trust. It was contended that in a suit, two decrees can be passed one on the admitted facts and

other after contest. For this, reliance was placed on : 74(1998)DLT476 , Abdul Hamid and Ors. v. Charanjit Lal Mehra and Ors. According to the plaintiff, a decree can be passed even on constructive admissions and for this reliance was placed on : 79(1999)DLT229 , Raj Gopal (HUF) v. State Bank of India. Relying on (1999) DLT 809, Deenar Builder Pvt. Ltd. v. Khoday Distilleries Limited, it was contended that despite the admissions which can be constructive also, allowing the suit through the motions on recording evidence would be a dereliction of judicial duty.

12. According to the learned Counsel for the plaintiffs, Mr. Garg, the evasive denials will lead to inference of deemed admission and placed reliance on : 84(2000)DLT475 , Thomson Press (India) Ltd. v. Megh and Company and Ors.; and : [1964]4SCR19 , Badat and Co. v. East India Trading Co. The plaintiffs also placed reliance on 2000 Rajdhani Law Reporter 423, Ved Perakash v. Marudhar Services; 87 (2000) DLT 76, Zulfiquar Ali Khan (Dead) through Lrs. and Ors. v. Straw Products Limited and Ors.; : AIR 2000 SC2740 , Uttam Singh Dugal and Co. Ltd. v. Union Bank of India and Ors.; : 105(2003)DLT767 , PNB Capital Services Ltd. v. Atul Glas Industries Ltd.; : AIR 2005 SC2765 , Charanjit Lal Mehra and Ors. v. Smt. Kamal Saroj Mahajan and Anr.; : 81(1999)DLT452 , Smt. Jaspal Kaur and Ors. v. Union of India; and : AIR 1993 SC1742 , Smt. Chand Rani (dead) by L.Rs. v. Smt. Kamal Rani (dead) by L.Rs.

13. Regarding the plea of limitation, the plaintiff submitted that a date for performance is not to be fixed for the performance of agreement under Article 53 of the Limitation Act. It does not require that a particular date from the calendar must be mentioned in the documents and it is sufficient if the basis of calculating the date fixed for the performance is ascertainable from the document and relied on : AIR 1990 SC529 , Ramzan v. Hussaini , Bhagwan Singh v. Teja Ram; : AIR1996 Mad353 , Vairava v. K.S. Vidyanandam and Ors. As to what should be the form of the decree in case of a suit for performance of prior purchaser against his vendor and subsequent purchaser, reliance was placed on : [1954]1SCR360 , Durga Prasad and Anr. v. Deep Chand and Ors. and : [1971]2SCR573 , Ramesh Chandra Chandiok and Anr. v. Chuni Lal Sabharwal (dead) by his legal representatives and Ors., to contend that time was not the essence of the contract in the sale or immovable property and normal presumption is that the time is not

the essence of the contract and non-mentioning of specified sum to be paid for breach of contract does not by itself bar decree of performance. It was contended on the basis of ratio of , Smt. Shakuntla Devi v. Mohanlal Amrit Raj Jain Market, Pali.

14. The application of the plaintiffs is contested by the defendant Nos. 1 and 2. The defendants have asserted that the plaintiffs have not filed the original documents and with a view to avoid filing of original documents have filed the application under Order 12 Rule 6. It was also contended that the Income Tax authorities could not have returned the documents to the plaintiffs and ought to have returned the documents pertaining to the property in dispute to defendant Nos. 1 and 2. According to the defendants the application is an abuse of the process of law and without evidence of the parties specially when sale deed dated 30.9.1988 has come into existence with forged and fabricated signatures of defendant Nos. 1 and 2, the disputes between the parties cannot be adjudicated without allowing parties to substantiate their respective pleas and contentions.

15. The defendant Nos. 1 and 2 have relied on : 68(1997)DLT846 , Madhav Leasing Finance Pvt. Ltd. and Anr. v. E.E.I.P Pvt. Ltd.; : 82(1999)DLT76 ; Amar Agencies v. A.P. State Handloom Weavers Cooperative Society; : 83(2000)DLT399 , Sh. Manbendra Shah and Ors. v. Gopal Das Estates and Housing Pvt. Ltd.; : 82(1999)DLT281 , Sh. Mohan Prasad Jha v. Sh. Shambhu Prasad Singh and : 2001(60)DRJ1 , Bhanu Mehra v. Data Brij Kishore and Ors.

16. The defendant Nos. 1 and 2/non-applicants have categorically pleaded that they left India for USA on 29.8.1987 and thereafter they visited India only on 10.9.1991 after more than 4 years. Consequently, it was contended that they could not had signed or executed any sale deed at Delhi in respect of their property No. B-7/118, Safdarjung Enclave Extension, New Delhi on 30.9.1988 in favor of defendant No. 3. The said defendants have also contended that the suit for specific performance, declaration, perpetual and mandatory injunction is not maintainable as the agreement to sell made between the defendants and the plaintiffs has already expired and there is no new agreement between the parties which can be enforced. Though no counter claim or a suit for recovery of

possession has been filed by the defendant Nos. 1 and 2 against the plaintiff but they have pleaded that the possession of the property which was taken over by the appropriate authority of the Income Tax department along with all necessary original documents should have been handed over to defendant Nos. 1 and 2 and not to the plaintiffs and consequently since the plaintiffs have taken over the property indirectly from Income Tax department without involving the defendants the suit for specific performance against the said defendants does not lie. Regarding handing over the possession to the Income Tax department it was contended that the defendant Nos. 1 and 2 were compelled to hand over the vacant possession of the suit property under pressure and duress on 20.8.1987 along with original documents such as sale deed, sanctioned plans, completion certificate of the building and other necessary documents.

17. The defendant Nos. 1 and 2 have categorically pleaded that the agreement to sell dated 21.5.1987 has already expired long back and that agreement to sell between the parties cannot be enforced at this belated stage and as no fresh agreement has been executed by the defendants with plaintiff to sell the aforesaid property whose value has increased tremendously the defendants are, in fact, entitled to enhanced consideration in case sale deed is desired to be executed by the plaintiffs in their favor for which new agreement to sell may be ordered to be executed between the parties.

18. In view of these specific averments by the defendant Nos. 1 and 2 they have denied the allegation of plaintiffs that the only hurdle in execution of the sale deed by defendant Nos. 1 and 2 was non grant of no objection certificate under Chapter XX-C of the Income Tax Act, which was received on 11.1.2002, in compliance of the order dated 12.12.2001 passed by the Division bench of this Hon'ble Court. The defendant Nos. 1 and 2 have resisted the decree of specific performance being passed on the ground that the possession could not be given to the plaintiffs by the Income Tax department and agreement to sell dated 21.5.1987 and the period of the agreement has already expired long back and consequently the agreement to sell cannot be enforced at a belated stage. The defendant Nos. 1 and 2 have also prayed that they are entitled for enhanced consideration in case any sale deed is to be executed by them in favor of plaintiff.

19. I have heard the learned Counsels for the parties in detail and perused the pleadings and application and reply and the judgment relied by them. It is no more rest integra that before a court can act under Order XII Rule 6, admissions must be clear and unambiguous. When the admission is not clear and unequivocal and the pleadings of the parties raise serious preliminary pleas which are likely to non-suit a party, a court in its discretion can refuse to pass a decree. It can also be not disputed that the court is vested with discretion to ask for independent corroboration of a fact not specifically denied in the pleadings considering the peculiar nature of the facts and circumstances of the case. At the same time, the court can suo moto pass judgment under Order XII Rule 6 where the parties have conceded the rights of other parties. The admissions made in the pleadings have to be taken as a whole and not in part. The provisions of Order XII Rule 6 are discretionary and not mandatory and it is not incumbent on the courts in all cases to pass a judgment upon admission. Specially, if a case involves questions which cannot conveniently be disposed of but an application under this rule or if the case is such that it is not safe to pass a judgment on admission, the court may in exercise of its discretion refuse the motion.

20. The defendant Nos. 1 and 2 have pleaded that they could not have executed the sale deed dated 30.9.1988 in favor of defendant No. 3. The defendant Nos. 3 to 5 are ex-parte. Since the sale deed dated 30.9.1988 is a registered document merely on the plea of defendant Nos. 1 and 2 and plaintiffs that it is a forged document, it will not be appropriate to grant a declaration without the corroborative evidence of the plaintiffs and defendant Nos. 1 and 2 in this regard. Similarly, for the sale deeds dated 18.9.2000 and 22.9.2000 a declaration may not be granted that they are forged unless there is corroborative evidence of plaintiffs on oath. The defendant Nos. 3 to 5 were proceeded ex-parte and no written statement was filed by the defendants. Since no written statement was filed the Court could proceed against them under Order 8 and could pass a decree but that was not done because it was contemplated that the plaintiffs shall lead corroborative evidence on their pleas and contentions. Consequently, the plaintiff shall have to establish by leading evidence against the said defendants even if they are ex-parte, that they are entitled for declaration.

21. The said defendants have also contended that the suit for specific performance, declaration, perpetual and mandatory injunction is not maintainable as the agreement to sell made between the defendants and the plaintiffs has already expired and there is no new agreement between the parties which can be enforced. Though no counter claim or a suit for recovery of possession has been filed by the defendant Nos. 1 and 2 against the plaintiff but they have pleaded that the possession of the property which was taken over by the appropriate authority of the Income Tax department along with all necessary original documents should have been handed over to defendant Nos. 1 and 2 and not to the plaintiffs and consequently since the plaintiffs have taken over the property indirectly from Income Tax department without involving the defendants the suit for specific performance against the said defendants does not lie. Regarding handing over the possession to the Income Tax department it was contended that the defendant Nos. 1 and 2 were compelled to hand over the vacant possession of the suit property under pressure and duress on 20.8.1987 along with original documents such as sale deed, sanctioned plans, completion certificate of the building and other necessary documents.

22. The defendant Nos. 1 and 2 have categorically pleaded that the agreement to sell dated 21.5.1987 has already expired long back and that agreement to sell between the parties cannot be enforced at this belated stage and as no fresh agreement has been executed by the defendants with plaintiff to sell the aforesaid property whose value has increased tremendously and the defendants are, in fact, entitled to enhanced consideration in case sale deed is desired to be executed by the plaintiffs in their favor for which new agreement to sell may be ordered to be executed between the parties.

23. The relief of specific performance is also a discretionary relief. Whether the discretion to pass a decree for specific performance be exercised or not depends on various facts and circumstances. In view specific averments by the defendant Nos. 1 and 2 the plea of the plaintiffs that the only hurdle in execution of the sale deed by defendant Nos. 1 and 2 was non grant of no objection certificate under Chapter XX-C of the Income Tax Act, which was also received on 11.1.2002 in compliance of the order dated 12.12.2001 passed by the Division bench of this

Hon'ble Court, is not correct. The defendant Nos. 1 and 2 have resisted the decree of specific performance being passed on the ground that the possession could not be given to the plaintiffs by the Income Tax department and agreement to sell dated 21.5.1987 and the period of the agreement has already expired long back and consequently the agreement to sell cannot be enforced at a belated stage. The defendant Nos. 1 and 2 have also prayed that they are entitled for enhanced consideration in case any sale deed is to be executed by them in favor of plaintiff.

24. The provision of Order 12 Rule 6 are discretionary and not mandatory and it is not incumbent on the Courts in all cases to pass judgment upon admission. A decree under Order 12 Rule 6 must be passed on admissions which are clear and unambiguous. When the admissions are not clear a Court in its discretion can refuse to pass a decree and can ask the parties for independent corroboration of fact considering the peculiar nature of facts and circumstances of the case

25. The plaintiffs have relied on a number of judgment to contend that a decree for specific performance and other decrees be passed in their favor. The judgments relied on by the plaintiffs are clearly distinguishable. In Atma Ram properties (Supra) the tenancy of the defendant was terminated and there was no claim by the defendant for renewal of tenancy nor it filed any counter claim. The law that one of the co-owners can seek eviction without impleading the other co-owners is settled and consequently in Surjit Singh (Supra) relied on by the plaintiff it was held that the plea of the defendant that the suit was bad was not considered and directions were given to the respondents under Order 12 Rule 6 and Order 39 Rule 10 of CPC which case is apparently distinguishable from the present facts and circumstances and the case of the plaintiffs. In R.N. Sachdeva (Supra) the defendant had not disputed the corroborative and monthly minimum charges entailing passing of a decree under Order 12 Rule 6 for recovery of possession. Similarly in Abdul Hamid and Ors (Supra) the defendant had relied on an unregistered lease deed, however, since the tenancy had expired even by efflux of time and the possession of the defendant after the expiry of his lease was not lawful the decree for possession under Order 12 Rule 6 was passed. The other judgment relied on by the plaintiff, Raj Gopal HUF; is also distinguishable. In M/s. Thompson Press India Ltd. (Supra) evasive denials were held to be admission and

on that basis the suit was decreed in contradistinction to the plea raised by the present defendant Nos. 1 and 2 that the time in terms of agreement of 1987 has expired and plaintiff is not entitled for specific performance. Such a plea of defendant Nos. 1 and 2 cannot be termed evasive so as to entail a decree for specific performance especially when a decree of declaration regarding the other sale deeds executed in respect of the same property is also to be passed on the basis of corroborative evidence to be led by the parties as the plaintiffs have contended that the registration number given on the sale deed in favor of defendant No. 3 does not have same sale deed in the Registrar of Documents but some other documents which will require corroborative evidence of Registrar of Documents.

26. The other precedents relied on by the plaintiffs are also distinguishable. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The Supreme Court in *Bharat Petroleum Corporation Ltd. and Anr. v. N.R. Vairamani and Anr.* AIR 2004 SC 778 had observed:

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and Anr. is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of Anr. To decide therefore, on which side of the line a case falls, the broad resemblance to Anr. case is not at all decisive. Suffice it will be to say that the precedents relied on by the plaintiffs are distinguishable and decrees as prayed by the plaintiffs can not be passed in their favor in the facts and circumstances.

27. Consequently on the application of the plaintiffs the suit for specific performance and other relief can not be decreed. The application of the plaintiffs under Order 12 Rule 6 is therefore, dismissed. Parties are however, left to bear their own costs.

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