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Dinesh Kumar Vs. Savita

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Court : Delhi

Decided On : Jul-23-2013

Judge : Rajiv Sahai Endlaw

Appellant : Dinesh Kumar

Respondent : Savita

Advocate for Pet/Ap. : Mr. Parvinder Chauhan

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

23. d July, 2013 % + RFA 220/2012 DINESH KUMAR Through: ..... Appellant Mr. Parvinder Chauhan, Adv. Versus SAVITA ..... Respondent Through: None. CORAM :HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J 1.The appeal impugns the order dated 07.02.2012 of the Additional District Judge (NW)-III, Rohini Courts, Delhi rejecting the plaint in CS No.280/2011 filed by the appellant for specific performance of an Agreement of Sale of immovable property and for injunction.

2. Notice of the appeal was issued and the counsel for the respondent / defendant appeared. However the appeal was on 14.01.2013 dismissed in default of appearance of the appellant / plaintiff. The appellant / plaintiff applied for restoration and notice of which application was ordered to be issued to the respondent / defendant and the respondent / defendant was duly served therewith

for 15.05.2013; none appeared for the respondent / defendant. In the circumstances, the application for restoration was allowed and the appeal restored to its original position and listed for hearing for today.

3. None appears for the respondent / defendant today also.

4. Though the Trial Court record has not been requisitioned and the appeal has not been formally admitted but the appellant / plaintiff has along with the appeal inter alia filed a copy of the plaint and which alone has to be seen to determine whether the order of rejection thereof suffers from any irregularity or illegality. Thus the counsel for the appellant / plaintiff has been heard.

5. It is deemed appropriate to set out the relevant paras of the plaint herein below. The same are as under:

1.

2. That the parties to the suit were known to each other and were having good and cordial relations for a long period of time.

3. That the Defendant and her husband represented that the Defendant is owner of Suit Property.

4. That in the last week of December 2007, the Defendant and her husband represented that they were in need of money, as such, they wanted to sell the Suit Property. As such, the Suit Property was offered to be sold to the Plaintiff.

5. RFA 220/2012 That the present suit pertains to the property bearing Plot No.587 min. measuring 4 Biswas (200 sq. yds.), falling in extended Abadi / Lal Dora of Village Alipur, Delhi-110 036. (Hereinafter to be called and referred as the Suit Property). The present suit is being filed for Specific Performance of the Agreement to Sell which was entered into between the Plaintiff and Defendant with respect to the sale of Suit Property by the Defendant to the Plaintiff. That after negotiations, the Suit Property was agreed to be sold to the Plaintiff for a sum of Rs.8 lakhs. The Plaintiff agreed to purchase the Suit Property at the offered / agreed price of Rs.8 Lakhs. Page 2 o

6.

7. That due to long standing acquaintance and cordial relations, the plaintiff agreed to pay the demanded sum of Rs.7,50,000/(Rupees Seven Lakh Fifty Thousand only) to the Defendant. It is submitted that said sum of Rs.7,50,000/- was paid on 01.01.2008. However, since said day was court holiday, as such, stamp paper for writing down the agreement could not be arranged. The Defendant and her husband stated and represented that they shall execute the necessary sale agreement on stamp paper in a day or two and the Plaintiff should not have any worry in this regard.

8. That because of long standing relations and acquaintance, the Plaintiff believed the said representation of Defendant and her husband and paid the demanded sum of Rs.7,50,000/-. It was agreed that, the balance sale consideration i.e. Rs.50,000/(Rupees Fifty Thousand only) shall be paid at the time of execution of the sale deed in favour of the plaintiff. The Defendant agreed to execute the Sale Deed as soon as the requisite No Objection from the Revenue Department is received. The Defendant and her husband represented that obtaining of said No Objection may take a fortnight to 2-3 months. The Defendant and her husband further represented that they shall intimate the Plaintiff about the factum of receipt of No Objection and thereafter the Plaintiff should purchase the stamp papers for engrossing the Sale Deed, thereon.

9. That, after some time when the Plaintiff called upon the Defendant to know the status of No Objection, it was informed to the Plaintiff that the same has not yet been provided by the Revenue Department.

10. RFA 220/2012 That, however, it was requested by the husband of the Defendant that they require, at least, a sum of Rs.7,50,000/- immediately. That even since then the attitude of the Defendant and her husband became indifferent towards the Plaintiff. As and when the Plaintiff asked the Defendant for execution of Sale Deed Page 3 of 8 evasive answers were given. As the Plaintiff had already given a considerable amount to the Defendant, as such, the Plaintiff was not having many options but to wait for the Defendant to come forwards and execute the Sale Deed. But, the wait became unending and no firm commitment about the

exact date for execution of the Sale Deed was forthcoming.

11.

12. That, however, the Plaintiff has failed to come forward and comply with the said legal notice.

13. That it is pertinent to mention here that the plaintiff was always capable, willing and ready to pay the balance sale consideration i.e. Rs.50,000/- (Rupees Fifty Thousand Only) to the Defendant. The plaintiff is still ready and willing to pay the balance sale consideration to the defendant. However the Defendant has defaulted in discharge of her obligations under a concluded contract between the parties.

14. 6. That, ultimately perturbed by the attitude of the Defendant, the Plaintiff got a legal notice issued to the Defendant whereby the Defendant was called upon to come forward and accept balance sale consideration and also to execute sale document in favour of the Plaintiff. That however, even after receiving the aforesaid reply, the Plaintiff did not lose hope of amicable settlement with the Defendant. Therefore, even thereafter, there have been meeting between the Plaintiff and the Defendant and her husband. It is submitted that in the said meetings the Plaintiff has requested the Defendant to honour her commitment and execute the sale documents and also get the same registered in favour of the plaintiff. But, again, the Defendant and her husband remained non-committal. The respondent / defendant contested the suit by filing a written statement and thereafter filed an application under Order 7 Rule 11 of the CPC on the grounds that the appellant / plaintiff was not the owner of the property and had not placed on record any documents in respect of his ownership and had thus no locus standi to file the suit; that the respondent / defendant was the owner of the property suit for specific performance of Agreement of Sale of which had been filed and the appellant thus had no cause of action; and, that the allegations in the plaint are vague.

7. Though the grounds on which rejection of the plaint was sought were limited to the aforesaid but the learned Additional District Judge, while allowing the

application and rejecting the plaint under Order 7 Rule 11 of the CPC has given the following reasons: (i) that though the appellant / plaintiff had filed income tax returns of assessment year 2008-09 and which were submitted to the Income Tax Department on 10.12.2008 but the gross income of the appellant / plaintiff as per the said returns did not show as to how the appellant / plaintiff had available with him the sum of Rs.7,50,000/- stated to have been paid as sale consideration to the respondent/defendant; (ii) the appellant / plaintiff had not filed any bank statement to show that a transaction of Rs.7,50,000/- was entered into between the parties; (iii) that there was no record of payment of the amount of Rs.7,50,000/- by the appellant / plaintiff to the respondent / defendant towards sale consideration; (iv) reliance was placed on Mahesh Kumar Wadhwa Vs. Bimal Luthra 2009 (107) DRJ 27.holding, though in the context of grant of leave to defend under Order 37 of the CPC, that when a party enters into a transaction involving large sums of money in cash through non bank channels those transactions will always remain open to challenge and the burden heavily lies on the party to prove that he had entered into the said transaction; (v) that the appellant / plaintiff in the normal course of human conduct ought to have obtained receipt of Rs.7,50,000/-; (vi) that there was no explanation as to from where the appellant / plaintiff had arranged cash of Rs.7,50,000/-; (vii) that the appellant / plaintiff was not found to be possessed of the said amount through the other documents filed by the appellant / plaintiff before the Trial Court; (viii) that it was not the case of the appellant / plaintiff in the plaint that he had ever approached the respondent / defendant with balance sale consideration to ask the respondent / defendant to execute the sale documents; no specific date had been mentioned; (ix) no stamp paper is required for execution of the receipt and nothing prevented the appellant / plaintiff from obtaining the receipt of Rs.7,50,000/-; (x) that there was no mention in the plaint of the appellant / plaintiff having got prepared any bank draft of the balance sale consideration.

8. The aforesaid would show that the learned Additional District Judge, in deciding the application, has not only proceeded much beyond the grounds urging which rejection of the plaint was sought but has also travelled into the arena of drawing inferences, surmises and conclusions from documents, without affording the plaintiff an opportunity to lead evidence thereon and without putting the doubts so arising to appellant/plaintiff in cross examination and having an opportunity to

render explanation if any thereto.

9. Suffice it is to observe that the decision making done by the learned Additional District Judge in the impugned order travels beyond the scope of Order 7 Rule 11 of the CPC. It is significant that the learned Additional District Judge has not held that the plaint in the present case is lacking in averments material to a claim for specific performance or that it does not disclose any course of action. Once the plaint discloses a cause of action (and of which I have satisfied myself by going through the plaint) which requires determination by the Court, the Supreme Court in Mayar (H.K) Ltd. Vs. Owners and Parties, Vessed M.V. Fortune Express (2006) 3 SCC 10.has held that the opinion of the judge that the plaintiff may not succeed in the suit, cannot be a ground for rejection of the plaint.

10. The order impugned can thus not to be sustained.

11. The appeal is allowed and the order of rejection of plaint is set aside.

12. Decree sheet be prepared.

13. However the respondent / defendant having failed to contest the appeal, no order as to costs. The appellant / plaintiff to appear before the District Judge (North-West) and / or before any other Addl. District Judge of that district to whom the suit may now be marked, on 18th September, 2013.

14. A copy of this judgment along with a copy of the impugned order be sent to the Committee of Inspecting Judge of the learned Additional District Judge. RAJIV SAHAI ENDLAW, J JULY 23 2013 gsr..

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