

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+

CS (OS) 325/1998

Reserved on : January 31st, 2008

Date of Decision : February 4th, 2008.

M/S BIMAL BHOOMI PVT. LTD.

.... Plaintiff

Through: Mr. Shivesh Pal Singh, Advocate

versus

EMPIRE CONSTRUCTION & HOTEL CO. LTD.

....Defendant

Through Mr. P.V. Yogeswaran, Advocate

Mr. Justice S. Ravindra Bhat:

- | | | |
|----|---|------|
| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to the Reporter or not? | Yes. |
| 3. | Whether the judgment should be reported in the Digest? | Yes. |

Mr. Justice S. Ravindra Bhat:

1. The plaintiff in this suit claims a decree for Rs.25,00,000/- together with *pendente lite* and future interest at 24% per annum and costs against the defendants, jointly and severally.

2. It is averred that the plaintiff, a private company, was initially a partnership firm which was later merged with the plaintiff company. The partnership firm M/s Bimal Bhoomi (hereinafter “the firm”) was engaged in the business of negotiating and finalizing sale and purchase of immovable properties, to assist and aid in developing big colonies, resorts and other projects after purchasing agricultural land. The plaintiff identifies the land on which such projects can be set up; and thereafter

negotiates with the owners, arrives at an average price on which a chunk of land measuring 100 to 200 acres can be purchased. Subsequently, the plaintiff on demand from purchasers who intend to or want to set up such projects, give them options and also convey the price on which the plaintiff can transfer such land. The defendant is a limited company and second defendant, its Managing Director.

3. The first defendant, acting through the second defendant, approached the plaintiff claiming to be a Hotelier operating in Gujarat; the first defendant wanted to acquire 100 to 200 acres of land for setting up a novel project, the first of its kind in the country with a water park, near Delhi. The land preferred was near the International Airport; the proposal was to purchase more than 100 acres of land. One Sardar Pritpal Singh allegedly introduced the defendants to the plaintiff. It is averred that an agreement was entered into by which the plaintiff agreed to procure and convey 101 acres of land to the defendants @ Rs.8,01,000/- per acre in village Sidhravali, Distt. Gurgaon, Haryana. It is claimed that on 27th February, 1995, the plaintiff entered into an agreement with the first defendant, duly signed by the parties. It is alleged that though defendants agreed to pay a uniform rate of Rs.8,01,000/- per acre, since some of the land was touching the

National Highway, the price varied between Rs.12,00,000/- to Rs.17,00,000/-.

4. The plaintiff started purchasing the land through its associates by arriving at understandings and also executing agreement to sell and paying money to the owners of such land. It is claimed that the plaintiff did not doubt the solvency or intention of the defendants, having regard to their conduct and the visits of one Deepak Paul who used to stay in five star hotels and claimed the defendant's association with prominent individuals including film stars in the company. At the time of execution of the agreement, the second defendant handed over cheques for Rs.15,00,000/- as advance; however, the

cheques were received by the plaintiff without verifying the dates. It later transpired that there were three cheques of Rs.5,00,000/- each dated 1.3.1995, 15.3.1995 and 30.3.1995. Only one of these cheques was honoured and the others were returned unpaid for “Insufficiency of Funds”.

5. It is alleged that within six months of the date of agreement i.e. by August, 1995 a total amount of Rs.30,00,000/- had to be paid. It is also claimed that the defendants were supposed to make payment of a total sum of Rs.2,30,25,000/- by 31.8.1995 for purchase of 25 acres of land. Yet, they paid Rs.60,00,000/-, thus leading to a shortfall to the tune of Rs.1,70,25,000/-. It is alleged that in the meanwhile since the plaintiff could not keep up its commitments towards timely payment for purchase of the agreed land, amounts advanced to the owners were forfeited and such owners wanted a very high price for the land. Despite

tremendous pressure, the plaintiffs from their own resources ensured that sale deeds of approximately 25 Kanals and 7 Marlas were executed and registered in favour of the third defendant, nominated by the other defendants. However, the defendants did not pay the agreed amount.

6. The plaintiff avers that it suffered a total loss of Rs.1,34,00,000/-. This included Rs.40,00,000/- forfeited by the owners who had obtained advance from the plaintiffs towards purchase of their land. The advances were withheld due to non-performance of the agreement to sell with such owners. Likewise, the plaintiff had to pay compensation to such buyers to whom the plaintiff could not get the agreed land sold. This amounted to Rs.89,00,000/-. A sum of Rs.33,00,000/- was paid by plaintiff to M/s Networth Properties Pvt. Ltd and a Rs.6,00,000/- was paid to Mrs. Shashi Gupta and Mrs. Pramila Kumar. The balance amount was paid to other persons. It is claimed that the plaintiff incurred approximately Rs.5,00,000/- as incidental expenses.

7. As against the total liability amount of Rs.1,34,00,000/- due to non-payment of money under terms of the agreement by the defendants, they paid Rs.90,00,000/- to the plaintiff out of which sale deeds were executed for Rs.25,38,168.50. After deducting this amount from the payments made, a sum of Rs.64,61,831.50 remained as balance payable to the plaintiff. It is claimed that the sum of Rs.30,00,000/- deposited with the plaintiff was non-refundable. After

duly adjusting Rs.64,61,831.50 from the total amount payable, the plaintiff claims to be entitled to recover Rs.69,38,168.50. However, it limits its claim for recovery to the extent of Rs.25,00,000/- from the defendants. Plaintiff alleges that despite several demands and letters, the defendants evaded payment of any amounts to it.

8. In their written statement, the description and status of the firm as averred by the plaintiff is denied. The defendants also dispute the merger between the firm and the plaintiff company. They also deny that the plaintiff is in the business of negotiating and finalizing sale and purchase of immovable properties. It is alleged that the defendants initially were engaged in running a hotel; later under the influence of Sh. Dipak Paul the hotel franchise agreement was ended. The said Shri Dipak Paul advised establishment of a resort in Gurgaon, Haryana and introduced one Sh. Prithi Pal. It is claimed that both those individuals introduced the plaintiff and proposed that its land be used for putting up the resort project. It was in these circumstances that the agreement dated 27th February, 1995 was entered into. According to the defendants, in the agreement the plaintiff agreed to transfer 25 acres of land within six months, including 13 acres of land touching and facing the National Highway (Delhi-Jaipur Road) and other 12 acres of land shown in the site plan. In terms of the agreement, another 25 acres of land was to be transferred on or before 31st November, 1995; further 25 acres of land was transferable on or before 20.2.1996 and the remaining 26 acres of land

was to be transferred on or before 31st May, 1996.

9. The defendants claim that pursuant to execution of the agreement, the first defendant company paid Rs.94,00,000/-, particulars of which are disclosed in para 7 (b) of the written statement. It is also alleged that despite explicit instructions that cheques for Rs.55,00,000/-, - which had been left with Shri. Dipak Paul and Shri. Anil Grover (who had been introduced as an advocate) to have executed the sale deeds in the first defendant's favour, --released in that eventuality, the cheques were released without execution of such sale deeds. Thus despite payment of Rs.94,00,000/- before August, 1995, the plaintiff failed to get sale deeds of 13 acres of land touching the National Highway and 12 other acres of land. The plaintiff allegedly to shirk its responsibilities got six sale deeds for small pieces of land executed on 27th September, 1995 for a total consideration of Rs.25,38,168.50. It is claimed that this amounted to cheating as there was no due compliance with the terms of the agreement. Complaints were, therefore, filed for cheating and misappropriation alleging offences U/s 406/420 Indian Penal Code against the plaintiff.

10. It is alleged that the plaintiff miserably failed to perform and discharge its obligations in the agreement and that it, in any event did not own or otherwise was not entitled to 150 acres of land as claimed in the agreement. The allegations in the suit with regard to purchase of land on behalf of the plaintiff's associates; its failure of the defendants to make timely payments and leading to the plaintiff's

losses have all been denied. It is denied that the plaintiff suffered a loss of Rs.1,34,00,000/-. The

plaintiff's averments about having to pay compensation of Rs.89,00,000/- (Rs.33,00,000/- to M/s Networth Properties Pvt. Ltd. and Rs.6,00,000/- to Ms. Shashi Gupta and Ms. Parmila Kumar and Rs.50,00,000/- to others) are all denied. It is also alleged that the plaintiff is not entitled to claim any amount or the sum of Rs.25,00,000/-.

11. In support of its case, the plaintiff has exhibited and proved three documents; the agreement dated 27.2.1995 is marked as Ex. P-1; the two cheques returned along with return memo dated 1.3.1995 and 20.3.1995 have been marked as Ex. P-2 and P-3. The plaintiff relied upon the deposition through affidavit of Sh. Bijender Chand Jain, its whole time Director dated 31.7.2004; tendered in evidence on 4.3.2005. The said witness was cross-examined.

12. The defendants relied upon the testimony of Sh. Hasmukh C. Shah, second Defendant and Managing Director of the first defendant company; he tendered the affidavit dated 16.5.2005 before the Court on 01.12.2006 and was subsequently cross-examined on behalf of the plaintiff.

13. The following issues were framed for determination in the present suit, by order dated 12.12.2003. They read as follows:-

- i) Whether this Court has jurisdiction to entertain, try and dispose off the present suit?
OPD.
- ii) Whether there is any contractual relationship between the plaintiff and the defendant?
OPP.
- iii) Whether the plaintiff incurred a loss of Rs.1,34,00,000/- due to non-payment of defendant as per the terms of agreement between the plaintiff and the defendant and the plaintiff is entitled to recover the same from the defendants by way of damages and

compensation? OPP.

- iv) Whether the defendants are liable to pay an amount of Rs.69,38,168.50 after giving adjustment of the amount paid by the defendant to the plaintiff?
- v) Whether the plaintiff failed to get the sale deeds executed for 13 acres of land towards the National Highway and other 12 acres of land in spite of payment of Rs.94 lakhs before August, 1995? OPD.

14 . This court's finding on the above issues are in the following terms:-

Issue Nos.1	:	Yes
Issue No. 2	:	Yes.
Issue Nos. 3&4	:	No.
Issue No. 5	:	Yes

15. The reasons in the above findings are indicated below:-

ISSUE NO.1:-

The objection as to territorial jurisdiction of the court is premised upon Section 16 of the Code of Civil Procedure. The defendants contend that the subject matter of the proceedings relates to a land which is admittedly located at Gurgaon, Haryana; the suit concerning immovable property has to be filed in the competent court having territorial jurisdiction over such immovable property.

16. A reading of the agreement dated 27th February, 1995 no doubt discloses that it is concerned with purchase of 101 acres of land in the revenue Estate of village Sidhravali, Disst. Gurgaon, Haryana. Yet, none of the relevant claims concern injury to or rights asserted over such immovable property. What is claimed is a money decree, styled as compensation, from the defendants. The agreement in

question was entered into, admittedly, between the parties at New Delhi. In the circumstances, the claim is not seeking enforcement of any right, title or interest in respect of immovable property but for compensation or damages, for causing loss to the plaintiff. As such location of the immovable property is not a relevant factor. Since the agreement was entered into in New Delhi, a part of the cause of action did arise in New Delhi. Therefore, this suit is maintainable before this Court.

17. **ISSUE NO. 2:-**

This issue was framed because the defendant alleged that no cause of action had accrued to the plaintiff and that no privity of contract between the plaintiff and Defendant No.1 existed. The objection articulated here is that M/s Bimal

Bhoomi, the firm had entered into a contract whereas the plaintiff is a private company; no link between the plaintiff and the said firm has been disclosed. According to the defendants, there are no materials to show that the plaintiff is entitled to file a suit in relation to the agreement entered into by the firm.

18. The plaint averments about the existence of the firm and formation of the company and a subsequent operation of the agreement have been generally denied. The plaintiff has, on the other hand filed its Memorandum of Association. The memorandum, however, does not explicitly suggest that the plaintiff company took over the estate and liabilities of the firm or became its successor in law. Nevertheless, in the course of deposition PW 1 i.e. Bijender Chand Jain specifically stated that the plaintiff was previously working under the name and style of M/s Bimal Bhoomi, a partnership firm of himself and Sh. Arkit Jain. He was extensively cross-examined on this aspect. He denied the suggestions that the plaintiff had nothing to do with M/s Bimal Bhoomi.

19. The written statement read as a whole together with the evidence led on behalf of the plaintiff suggests that the firm comprised of Sh. Bijender Chand Jain and Arkit Jain who are the directors of the plaintiff. Having regard to the nature of the transaction and the fact that the agreement was entered into on 27.2.1995, whereas the company was formed subsequently, the fact that the plaintiff company took over the contracts and succeeded the firm cannot be ruled out. This issue is accordingly answered in the affirmative.

Issue Nos 3 & 4:

20. These issues require to be taken up and considered together, for the sake of convenience. The plaintiff claims to have suffered a loss of Rs. 1.34 crores. This is made up of amounts paid to owners of land, who allegedly forfeited the sums paid (by the plaintiff) due to non compliance with the terms of the agreement, by the defendant.

21. The Agreement, Ex-P-1 recites that the plaintiff and its associates are entitled to or are owners, in possession of a total area of more than 150 acres, in revenue estate Village Sidhravli, Distt. Gurgaon, Haryana. Clause 1 sets out the agreed price for the subject matter, i.e 101 acres; it is Rs. 8,01,000/- per acre. Clause 2 mentions about the advance paid by the defendant; it is Rs. 15 lakhs. A reading of clauses 3 and 4 show that the plaintiff was entitled to Rs. 30 lakhs within six months from the date of agreement; it was to transfer 25 acres of land, by 31st August, 1995, consisting of 13 acres of land touching or facing the National Highway, and the balance 12 acres, as described in the schedule. In terms of the agreement, another 25 acres of land was to be transferred on or before 31st November, 1995; further 25 acres of land was transferable on or before 20.2.1996 and the remaining 26 acres of land was to be transferred on or before 31st May, 1996. Clause (x) stipulated that the advance Rs. 30

lakhs was to be appropriated towards execution and registration of the sale deeds, in the last phase.

22. The plaintiff alleges that it got land registered in favour of the third defendant, an admitted nominee of the defendants. This was for a consideration of Rs.25,38,168.50. The defendants do not deny it; their case is that the plaintiffs, in lieu of this consideration, conveyed 25 kanals and 7 marlas of land, despite securing Rs. 94 lakh. According to them, the plaintiffs were to have transferred 13 acres near the National Highway and another 12 acres of designated lands, mentioned in the schedule.

23. In support of the plaintiff's allegation of having incurred losses of Rs.1,34,00,000/- no documentary evidence has been led. No doubt, PW-1 has generally deposed to this fact. However, the plaintiff has not adduced any evidence, in the form of bank statements, audited accounts or any receipts, disclosing that amounts were paid to the owners of land for executing agreements to sell, which were forfeited by such vendors. No evidence, oral or documentary of such vendors, forfeiting such amounts, or even alleging that such amounts had been received or paid as compensation, has been produced before the court. PW-1 admitted during cross examination that the plaintiff company had not filed any balance sheet and that its authorized share capital was Rs. 2 lakhs only. He also admitted to the plaintiff receiving Rs. 90 lakhs within 6 months of the agreement from the defendants and that the plaintiffs had not entered into written agreements with vendor-farmers for purchasing the 13 acres of land near the National

Highway; he mentioned about arranging funds from M/s Networth. He also deposed that the defendants

were at fault in not paying for the 13 acres of land near the National Highway, due to which it could not be transferred; he stated that 3 acres of such land was however transferred.

24. The entirety of the plaintiff's claim is based on alleged losses, to the tune of Rs.1,34,00,000/- of which they claim to have adjusted Rs. 64,00,000 leaving the amount of Rs. 69,38,168.50 payable by the defendants. This claim is premised on payments made to farmers and owners of land; such amounts were allegedly forfeited. Although in support of the suit, some agreements were initially produced, to say that such owners had entered into arrangements for selling their land to the plaintiffs, upon denial of such documents, the plaintiff made no attempt to have them proved, either by its witness, or by other signatories to such contracts. The plaintiff also did not produce any receipts or any independent documentary evidence to support its allegation of having incurred losses, on account of payment to landowners who forfeited the amounts. Additionally, PW-1 admitted that no balance-sheet was maintained by the plaintiff company.

25. A suitor who approaches the court for relief has to lead positive evidence in support of his case. In this case, the only piece of evidence led about the alleged losses, to the extent of Rs. 1,34,00,000/- is the testimony of PW-1. The said witness admitted that no written agreements were entered into with farmers; other agreements sought to be used, were not marked in evidence; no attempt was made

to support them. In this state of evidence, and without even proof of any payments made to the farmers or other vendors of the land, this court cannot accept the plaintiff's version of having incurred losses, as alleged, or that the defendants, after adjustment of monies paid by them were liable to pay Rs. 69,38,168.50. The issues are accordingly answered against the plaintiff.

Issue No. 5:

26. The defendants alleged that the plaintiffs, despite payment of Rs. 94 lakhs to them failed to get 13 acres near the National Highway registered in their favour, contrary to the terms of the agreement entered into between them, according to which 25 acres, including the 13 acres had to be conveyed within 6 months, i.e 31.8.1995.

27. The pleadings disclose that the plaintiff admits to registering land to the extent of Rs. Rs.25,38,168.50. According to the defendant, this was the sum disclosed for registration of 25 kanals 7 marlas. The defendant further alleged that the plaintiff did not convey the 25 acres as agreed. PW-1 deposed that though land was available, only 3 acres of such 13 acres near the National Highway was conveyed; he alleged that the defendants had not paid the agreed amounts by the stipulated date. No written notice or any contemporaneous document was disclosed to support the case that the land was available, but not conveyed due to the breach of contract by the defendants. DW-1, the witness on behalf of the defendant, deposed in support of their case. He maintained that the plaintiffs

conveyed 25 kanal 7 marlas, for having secured amounts; but that these were not in accordance with the contract, as 13 acres of land was not available with the plaintiffs.

28. Now, a close scrutiny of the pleadings and rival testimonies led on behalf of the parties shows that admittedly, 25 kanals 7 marlas were registered for Rs. Rs.25,38,168.50 in favour of the plaintiffs. These however do not correspond with the obligations spelt out in the agreement. The plaintiff's witness blandly deposed that the defendants did not pay the requisite amount, or signify their readiness, due to which the agreed land (25 acres out of which 13 acres was to be near the National Highway). However, he did not disclose or produce any notice supporting that allegation. The plaintiff admitted to having received Rs. 90 lakhs (not 94 lakhs, as the defendants allege). In fact, PW-1 admitted that only 3 acres of the land near the National Highway was registered in favour of the defendants or their

nominees.

29. The recital to the agreement between the parties declares that the plaintiffs and their nominees owned and controlled 150 acres, including the 13 acres in question. Yet, the plaintiffs version, in the course of these proceedings, is that those lands were subject to agreement to sell transactions entered with farmers. PW-1 also admitted that only 3 acres of this land could be transferred to the defendants.

30. On an overall analysis of the materials, pleadings and oral evidence, this court is of the opinion that the defendants proved that the plaintiffs failed to get the 13 acres near the Highway –which was subject matter of the agreement, transferred to them.

31. In view of the findings and reasons recorded above, the plaintiff cannot claim any relief. The suit is therefore, dismissed with costs, quantified at Rs. 30,000/- to be paid to the defendant.

DATED: 4th February, 2008

(S. RAVINDRA BHAT)
JUDGE