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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 2068/2002 and I.A. 897/2003

September 03, 2008

J.K.V.B. PROPERTIES F+ Plaintiff
Through Mr. M. Qayam-ud-din, Advocate

versus

BANARSI DAS AND SON Defendants
Through Mr. Siddharth Aggarwal, Advocate for
Applicant in I.A. 897/2003.
Mr. Harish Malhotra, Sr. Advocate with
Mr. Rajender Aggarwal, Advocate for D-1 to 3.
Mr. S.K. Kalia, Advocate for defendant No. 5.
Mr. J.S. Chauhan, Advocate for defendants 6,7 & 9.
Mr. Nishant Datta, Advocate for defendant No.8.
Ms. Minika Sharma, Advocate for Commissioner
of Industries.
Mr. Sanjay K. Shandilya, Advocate for defendant
No.4.

%03.09.2008

CORAM:

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 (OPEN COURT)

1. Learned counsel for the plaintiff submitted that with the execution of the Conveyance Deed dated 18th March, 2004, the claim in the suit has been satisfied. Learned counsel for the applicant in I.A. 897/2003, however, submitted that the amount lying in Court since 20th February, 2004 should be appropriated having regard to the circumstances of the case. Learned counsel for the defendants urged that by virtue of the said order dated 4th September, 2003 before

passing any final judgment, the Court has to make suitable order towards payment of interest by the plaintiff on the said balance amount i.e. Rs. 3.55 crores which had been kept in Court.

2. The facts briefly are that the plaintiff entered into an agreement to purchase industrial plot bearing Plot No.1, Okhla Industrial Estate, New Delhi along with super structure measuring 1648 sq. mtrs. which had been originally allotted to the second defendant in the proceedings. The said second defendant according to the agreement was a unit of the first defendant.

3. In terms of the agreement, the total consideration payable was Rs. 3.7 crores of which Rs. 15 lakhs was admittedly paid at the time of the execution of the Agreement to Sell. The balance was payable, after obtaining the income tax clearance under Chapter XX-C of the then existing Income Tax Act. The Vendor agreed thereafter to execute the Conveyance Deed. The pleadings on record and the materials reveal that there is no dispute that the plaintiff was informed on 29th November, 2001 about the income tax authorities having approved the proposed sale. On 6th December, 2001, the plaintiff wrote to the Vendors seeking no objection certificate or approval from the Directorate of Industries to effectuate the sale. It is relevant here to mention that the suit property was registered; in terms of the perpetual lease deed (a copy of which is on the record), several restrictive covenants have been placed on the Vendor, who is a lessee. Under the scheme of allotment, the Vendor was expected to obtain no objection certificate whenever it proposed to convey or transfer the property.

4. The plaintiff approached this Court in December, 2002 alleging inter alia that the defendants were unwilling to perform the contract and sought a decree for specific performance. It was pleaded among others that Defendants 6 to 9, the legal representatives of the deceased partner one Sh. S.C. Jhalani, who had died on 23rd February, 2002 had demanded that their share of the consideration should be paid. This had led to the plaintiff seeking clarifications from the

other defendants and also requiring them to ensure that the Directorate's permission was given. The defendants thereafter entered appearance and filed their written statements.

5. The record discloses that after several dates of hearing, the Court was of the opinion that in order to cut short the controversy since the main dispute about conveying the property was not an issue, a suitable order directing the authorities to grant no objection had to be made and also consequential order for payment of the balance consideration was required to be passed. Accordingly, on 4th September, 2003, the following order was made by the Court:

"The question whether any interest is payable by the plaintiff on the balance sale consideration will be decided by the Court on the next date of hearing. The question of disbursement is not being considered at this stage."

6. The plaintiff deposited an amount of Rs. 3.55 crores in Court on 20th February, 2004. By then, on 13th February, 2004, the Directorate of Industries granted its permission/no-objection for the proposed sale. The order sheets prior to that date disclose that officials of the Commissioner of Industries, Govt. of NCT of Delhi were present. The said Commissioner of Industries is 10th defendant in the suit. Eventually, pursuant to the Court's order, the sale deed was executed by the Registrar General. In these circumstances, the question which survives is whether and if to what extent the plaintiff is liable to pay interest on the balance consideration, deposited in the Court.

7. The counsel for the defendants urged that the plaintiff defaulted in the performance of its obligation. After being duly intimated on 29th November, 2001 about the Income Tax clearance the plaintiff the plaintiff was under an obligation to ensure that the balance amount was paid immediately or within reasonable time to enable execution of the Conveyance Deed. It was urged that as far as other formalities such as obtaining the no objection certificate from the Directorate etc. were concerned, the plaintiff being the purchaser had to secure it. It was

submitted that frivolous disputes raised by the legal representatives of one of the partners should not have prevented the plaintiff from making the payment so as to enable to execution of the Conveyance Deed. In these circumstances it is urged that the plaintiff should pay interest for the period November 2001 to February 2004, when the balance amount was actually deposited in the Court.

8. Counsel for the plaintiff resisted the contentions and urged that the documents on record, show that all the material times the plaintiff was diligent in the performance of his obligation. Immediately on receiving the intimation about income tax clearance, a letter was written to the defendants requesting for the no objection certificate from the Directorate of Industries, on 6th December, 2002. Thereafter, one of the four partners i.e. Sh. S.C. Jhalani died on 23rd February, 2001. Some of his heirs wrote to the plaintiff claiming that his share of the consideration should be paid. The plaintiff in these circumstances, sought clarification and got legal notices issued. However, the defendants were not forthcoming and have not even in this suit placed any document on the record. It was submitted that in the absence of any clear picture on this account and in the absence of the no objection certificate from the Directorate/Commissioner of Industries there was no question of paying the balance amount. It was also urged that the documents and the pleadings of the Directorate also reveal that the request for no objection was turned down on 6th March, 2002. In these circumstances, the equities of the case, it is urged, do not require exercise of discretion of the Court.

9. From the above narrative it is apparent that there is no dispute about the essential facts concerning execution of the Agreement to Sell or the fact that the Vendor was a partnership firm which included Sh. S.C. Jhalani, who died on 23rd December, 2001. It is also not disputed by the plaintiff that intimation of income tax clearance was received on 29th November, 2001. The

events that transpired after Sh. S.C. Jhalani's death to contain the scene of the present dispute. The legal representatives of Sh. S.C. Jhalani issued letters to the plaintiff claiming that they had interest in the property and be paid their, to the firm.

10. The plaintiff sought clarification and caused three legal notices dated 9th May, 2002, 26th July, 2002 and 20th September, 2002. It also sought for the approval by the Directorate of Industries, from the Vendor defendants. The documents on the record further show that the defendants were aware about the obligation to secure no objection and applied for it on 4.3.2002. The Directorate's written statement avers that this application was refused on 6th March, 2002. It is also averred by the defendant No.10, Directorate, that the firm was given a hearing on 20th March, 2002, after which the decision not to grant approval was left undisturbed. There is nothing on record to suggest that the defendants or the firm ever took any other corrective steps in orders to secure "No objection" certificate from the Directorate.

11. It is an implied term of any contract for sale or purchase of property that statutory clearances or other necessary compliance required to be obtained in law for effecting the same would be obtained by the Vendor (see: *Chandnee Widya Vati Madden vs. C.L. Katyal*, AIR 1964 SC 978, *R.C. Chandoik vs. C.L. Sabharwal*, 1970 (3) SCC 140 and *Ranijibhai Dhayabhai vs. Jani Narottamdass Lallubhai*, 1986 (3) SCC 300) unless a contrary intention appears or his expressed in the agreement. The agreement in this case which is a part of the record does not mention about such obligation, which means that the responsibility is of the vendor. Interestingly, it mentions about the obtaining of statutory clearance under the Income Tax Act. That application was made jointly by the plaintiff and the defendant firm. In the circumstances, the Court has to necessarily conclude that implicit in the bargain was the defendant/vendor's obligation to obtain the no objection certificate.

12. The above narrative, as the pleadings on the record and the material documents suggest that at the relevant time after becoming aware about the clearance by the income tax authorities, the plaintiff reminded the defendants, on 6th December, 2001 about their obligation to secure the Department of Industries' no objection certificate. This, however, did not mature at all. Apart from this, the disputes which after Sh. S.C. Jhalani's death to an extent cast a cloud on the transaction impelled the plaintiff to seek a clarification that the no objection certificate should be furnished in order to ensure that the title conveyed to him would be clear. This was not possible since the Directorate rejected the request of the firm on 6th March, 2002. The defendant firm did not, however, take any steps to have the matter rectified or challenged that Administrative decision in accordance with law. Eventually, it was left to this Court in the present proceedings to ensure that such a clearance was given by the authority.

13. The main claim in this case was one for specific performance of the Agreement of Sale. The intervention of Court has not only ensured that the agreement has been signed but also that the no objection certificate (which was the main impediment) was obtained. The defendants in fact could not perform that part of the bargain. A direction for interest, therefore, has to be viewed in the overall backdrop of the above facts. The defendants here are not counter claiming for any amount; therefore, order made on 4th September, 2003, stating that the question of interest i.e. Rs. 3.55 crores has to be seen on the basis of overall materials. This Court is of the opinion that in the circumstances of the case, equity should lie where it falls which means that no order on interest in favour of the defendants is called for. Therefore, no order in that regard is being made.

14. So far as the question of the amount lying deposited is concerned, the appropriate order in that regard is being made in the companion suit i.e. CS(OS) 158/2004. This Court has indicated

to the parties that the amount lying in deposit in the present case would be transferred to the file of that case where the suitable order of appropriation would be later made. Therefore, the Registrar General is hereby directed to ensure that the amount of Rs. 3.55 crores lying in deposit on account in this case (with accrued interest) is transferred or reflected to the account in said suit. Let the same be done within a week.

15. As far as the applications of Defendant Nos. 6 to 9 are concerned, they are claims of disbursement of amounts to them. They aver to having been employees of the defendant firm. These applications were filed in 2004. Having considered the submissions, the Court is of the opinion that they involve adjudication of substantive claims which should be decided in appropriate legal proceedings. The said applications are disposed of, leaving the applicants to agitate such claims in accordance with law.

16. In view of the above order, nothing further survives consideration in this case. The rights of inter se partners and their rival claims would be considered and adjudicated in substantive proceedings, not limited in CS(OS) 158/2004. All rights and contentions of parties in those proceedings are hereby reserved.

17. The suit is disposed off in the above terms.

S. RAVINDRA BHAT,J

SEPTEMBER 03, 2008
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