

**“REPORTABLE”**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RFA No. 226/2007**

Date of Decision : April 7<sup>th</sup> , 2008

# SATISH KUMAR .... Appellant  
! Through: Mr. D.K.Sehgal, Advocate.

versus

\$ MANISH SAHNEY & ORS. .... Respondents  
^ Through Mr. D.N. Rao, Advocate.

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**CORAM:**

**HON'BLE MR. JUSTICE MUKUL MUDGAL**  
**HON'BLE MS. JUSTICE ARUNA SURESH**

1. Whether the 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

**J U D G M E N T**

**ARUNA SURESH, J.**

1. This appeal challenges the judgment and decree of the  
learned Additional District Judge, Delhi dated 14<sup>th</sup> February,

2007 passed in suit No.57/2005, whereby the suit of the appellant (hereinafter referred to as 'Plaintiff') for specific performance, possession, declaration, permanent injunction and consequential relief against the respondents (hereinafter referred to as 'Defendants') in respect of Flat No.111, First Floor, Pocket 5, Block B, Sector 11, Rohini, Delhi which the defendant No.1 had agreed to sell and transfer in favour of the plaintiff was dismissed.

2. Brief facts of the case according to the appellant are that defendant No.1 is the original allottee of DDA Flat No.111, First Floor, Pocket 5, Block B, Sector 11, Rohini, Delhi and defendant No.2 his wife being co-sharer is also arrayed as defendant No.2 in the memo of parties. The defendants contacted one Rattan Lal Chauhan, a Property Dealer indicating their intention to sell their house. After negotiations, the defendants agreed to sell the property to the plaintiff for a sum of Rs.5,30,000/-. Rs.50,000/- were paid in cash and a bayana receipt for Rs.50,000/- was executed by defendant No.1 on 14.12.2004. The balance amount of

Rs.4,80,000/- was to be paid within seven days of the defendants obtaining the documents of title and Conveyance Deed. The defendant No.1 handed over the possession letter dated 27.7.2000 along with other documents like, challan slip, treasury slip, etc. to the plaintiff at the time of execution of the bayana receipt. The defendants were required to collect the Conveyance Deed from the DDA and agreed to execute the Sale Deed in favour of the plaintiff within seven days of the receipt of the Conveyance Deed. The period for payment of remaining balance amount of Rs.4,80,000/- was reduced from two months to 45 days in view of the dire need of the defendants for money and necessary correction was made on the bayana receipt. The defendants collected the Conveyance Deed from the DDA on 5.01.2005. Since the defendants failed to execute the Sale Deed in favour of the plaintiff within the stipulated time, a notice dated 09.02.2005 was sent to defendant No.1 for execution of the Sale Deed and for handing over the original documents, etc.. No reply, however, to the notice was received and defendants failed to execute the Sale Deed within stipulated period, hence the

suit was filed by the plaintiff against the defendants seeking specific performance of the said agreement to sell, permanent injunction, possession, etc.

3. The defendants contested this suit contending inter alia that the plaintiff is also a property dealer and he had verified all the documents on 7.12.2004 and paid only a sum of Rs.5,000/- to facilitate the defendants to have the Conveyance Deed from DDA and on 14.12.2004 another sum of Rs.45,000/- was paid to the defendants thereby making the advance payment of Rs.50,000/-. The balance consideration of Rs.4,80,000/- was to be paid by the plaintiff to the defendants within seven days from getting the Conveyance Deed from the DDA and Rs.5,000/- to be paid to Mr.Rattan Lal, the property dealer. The plaintiff had to make balance payment within 60 days from the date of execution of the bayana receipt and the plaintiff was to inform the name of the person in whose favour the Sale Deed was to be executed. The period of 60 days was reduced to 45 days as defendants knew that seller of the property No.96 to the

defendants would not wait for such a long time and therefore correction was made in the bayana receipt. On receipt of the Conveyance Deed, the plaintiff was informed on the same date and he was asked to disclose the name of the person in whose favour the Sale Deed was to be executed and the plaintiff was required to make payment within seven days i.e. upto 13.01.2005. The plaintiff failed to make the payment even upto 27.01.2005 and since the defendants did not receive balance amount of Rs.4,80,000/- from the plaintiff they could not make payment to Mr.Satish from whom they were to purchase the property by ways of an oral agreement. Mr. Satish, therefore, cancelled the agreement and accordingly the defendants also cancelled the agreement on 30.01.2005 and the plaintiff was asked to take back earnest money, though the defendants were within their right to forfeit the same and the suit therefore is liable to be dismissed.

4. On the pleadings of the parties following issues were framed for trial :-

(i) Whether the Plaintiff is entitled to the relief of specific performance, as prayed for? OPP.

(ii) If issue No.1 is decided in favour of the Plaintiff, whether the Plaintiff is entitled to recover possession of the property in dispute? OPP.

(iii) Whether the Plaintiff is entitled to declaration, as prayed for ? OPP.

(iv) Whether the Plaintiff is entitled to injunction, as prayed for ? OPP.

(v) Relief.”

5. After considering the evidence of the parties documentary as well as oral adduced on the record, the learned Additional District Judge was pleased to decide issue No.1 against the plaintiff and in favour of the defendants whereas issues No.2,3 & 4 were decided against the plaintiff in view of the findings on issue No.1. The learned Trial Court dismissed the suit of the plaintiff with the following observations.

“19. In view of findings of issues No.1 to 4 the suit of the Plaintiff so far as the relief for which specific issues No.1 to 4 had been framed is dismissed. However, in

order to avoid future litigation between the parties and also to do substantial justice, the Defendant No.1 is directed to refund the earnest money of Rs.50,000/- which he had received from the Plaintiff, within one and half months from today, failing which the Plaintiff shall be entitled to claim interest on Rs.50,000/- at the rate of Rs.6% per annum from 01.04.2007 onwards till realization.”

6. Mr.D.K.Sehgal, learned counsel for the appellant has submitted that the learned trial court mis-interpreted the contents of the bayana receipt Ex.PW1/B and also the efforts made by the plaintiff to find out whether Conveyance Deed had been made available to defendant No.1 on various visits to DDA. He further submitted that the court did not appreciate the statement and cross-examination of the plaintiff properly and dismissed the suit of the plaintiff on assumption that he was not ready and willing to perform his part of the contract because he was not having sufficient amount to pay to the defendant No.1 as agreed for execution of the Sale Deed. Therefore, it is submitted that the judgment and decree of the trial court is erroneous and liable

to be set aside and he is entitled to decree for specific performance and possession, etc. as claimed.

7. Mr. D.N. Rao, learned counsel for the respondents on the other hand urged that there is no error in the judgment and decree of the trial court and the evidence as well as the contents of the bayana receipt Ex.PW1/B have been appreciated by the court in right perspective, therefore, according to him, the appeal is without merit and deserves dismissal.

8. The admitted facts before us are:-

(a) The plaintiff is a property dealer.

(b) Bayana receipt Ex.PW1/B copy of which is Ex.DW1/2 bears the signature of defendant No.1 and the date underneath the signature is 14.12.2004.

(c) This bayana receipt is an agreement to sell executed inter se the parties.

9. What is required to be seen by us is whether this Bayana Receipt has been properly interpreted by the learned Additional District Judge while dismissing the suit of the plaintiff. As per this bayana receipt, defendant No.1 had agreed to sell the property in suit to the plaintiff for a sum of Rs.5,30,000/- and an earnest money of Rs.50,000/- was received at the time of execution of this bayana receipt. The balance amount of Rs.4,80,000/- was to be paid after seven days of the execution of the Conveyance Deed in the Sub-Registrar Office. Defendant No.1 agreed to transfer this property in the name of any person so named by the plaintiff. In case defendant No.1 failed to hand over the possession of the flat within 45 days, the plaintiff was entitled to claim a sum of Rs.1,00,000/- and in case the plaintiff failed to pay balance amount of Rs.4,80,000/- within 45 days the defendant No.1 was entitled to forfeit the earnest money.

10. The evidence led by the plaintiff by way of his own statement and his cross-examination by the defendants clearly indicate that plaintiff never visited the Sub Registrar

Office with Rs.4,80,000/- payable by him to defendant No.1 for execution of the Sale Deed. According to him, he had gone to DDA office number of times to find out if defendant No.1 had received the Lease Deed or not. This was not a part of the contract inter se the parties. Undisputedly, the plaintiff being a property dealer knew that Conveyance Deed was to be collected by the defendant No.1 from the office of the DDA. Plaintiff had tried to improve his case in his statement as his own witness which he was not permitted to do so and therefore it has been rightly observed by the trial court that "oral evidence cannot be allowed to be led to insert, add or delete any other condition to a written agreement which does not find mention in the agreement itself." A notice dated 9.02.2005 Ex.PW1/C was sent by Mr.O.N.Rattanpal, Advocate to defendant No.1. In para 3 of the said notice it was alleged that there was an understanding stipulated in the bayana receipt that defendant No.1 would collect the Conveyance Deed in his name from the DDA and would get the same registered with the Sub-Registrar, Pitam Pura, Delhi. The balance amount

was to be paid by the plaintiff to defendant No.1 after seven days of registration of the Conveyance Deed with Sub-Registrar. These facts as narrated in the notice do not find any mention in the bayana receipt and therefore, the trial court rightly did not accept any evidence on the part of the plaintiff which added more terms and conditions to the bayana receipt Ex.PW1/B.

11. The learned trial court has also observed that this additional evidence of the plaintiff as PW1 did not find mention in Ex.PW1/A. It is pertinent to mention here that alongwith the present appeal and even along with the documents filed thereafter, the plaintiff has not placed on the record a copy of the document Ex.PW1/A and the nature of this document is not known to us. We may also point out that along with this appeal the plaintiff has not filed the copies of the evidence of the witnesses examined by both the parties in the trial court. With the result, we have got minimum assistance from the counsel for the plaintiff for appreciation of the trial court judgment and evidence adduced on the

record by the parties and its assessment by the trial court while dismissing the suit of the plaintiff by him. It was for the plaintiff to place on record the copies of the complete record along with the appeal for the perusal and assistance of this court.

12. While rejecting the claim of the plaintiff, the learned trial court did assess the evidence of the plaintiff and came to the conclusion that the plaintiff was not having the balance amount of Rs.4,80,000/- with him and therefore was not ready and willing to perform his part of the contract. This was so held in view of the contradictory statements of the plaintiff when at one breath he stated that he had raised loan from the Bank and in the second breath he stated that he had collected the money or taken loans from his relations. It has come in evidence that he never went to the defendants with the money after 28.01.2005 as is evident from the notice Ex.PW1/C which is absolutely silent on this aspect of the matter. Had the plaintiff gone with the money to the defendants' house requesting them to execute the Sale Deed

on receipt of the balance amount and defendants refused this fact, would have found mention in the notice Ex.PW1/C indicating the intention of defendant No.1 not to execute the Sale Deed in his favour. Furthermore, it was the plaintiff who was to disclose the name of the person in whose favour the Conveyance Deed was to be executed. No such name was disclosed by the plaintiff to the defendants and it seems that being property dealer when he could not find another prospective buyer, he kept quiet and did not enforce the agreement to sell/bayana receipt Ex.PW1/B and waited till the time when he could arrange the prospective buyer.

13. Learned counsel for the plaintiff has referred to ***'Banshilal Soni (Dead) Through LRs Vs. Kastoor Chand Begani (Dead) by LRs & Ors., 2007 VII AD (SC) 37'***, to support his submissions that since the defendants failed to satisfy the plaintiff that they had received Conveyance Deed from the DDA within the stipulated period and had completed all requisite formalities before the registration of the Sale Deed and he was ready and willing to perform his part of the

contract, he is entitled to a decree for specific performance. Banshilal Soni's case (supra) is of not much help to the plaintiff. In the said case agreement dated 10.10.1989 was executed inter se the parties to the said suit. The dispute was whether this agreement tantamounted to agreement to sell or was a loan document. In the peculiar circumstances of the case, the Hon'ble Judges of the Supreme Court while dis-agreeing with the order of the High Court, maintained the order of the High Court for payment of Rs.7.5 lakhs by the respondents to the appellants and it was only in default of payment of the amount, the appeal was to be treated as allowed and the order of the High Court impugned in the said appeal was to be treated to have been set aside. The facts and circumstances of this case are different from the facts which were under consideration in the said appeal before the Division Bench of the Supreme Court.

14. In view of our discussion as above, we find no merit in the present appeal and the same is accordingly dismissed. It is also made clear that on 25<sup>th</sup> April, 2007, the defendants

had brought a sum of Rs.50,000/- payable to the plaintiff in compliance of the order of the learned Additional District Judge but the plaintiff refused to accept the same and it was ordered to be deposited in the court without prejudice to the rights and contentions of the parties. This amount was ordered to be kept in fixed deposit for a period of six months which was to be renewed from time to time. Since the appeal is dismissed, the plaintiff is at liberty to withdraw the said amount of Rs.50,000/-, if deposited, with interest, if any, accrued thereon. On his moving an application, the Registrar General shall refund the said amount within six weeks thereafter.

**(ARUNA SURESH)**  
**JUDGE**

**(MUKUL MUDGAL)**  
**JUDGE**

April 7, 2008  
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