

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

+ EFA(OS) NO.13/2008

Reserved on : 2nd April, 2008
Date of Decision: 8th April, 2008

VIBES DEVELOPERS (P) LTD. Appellant
Through Mr. V. P. Singh, Sr. Advocate with
Ms. Jasleen Oberoi, Advocate.

Versus

J.K. MEHRA & ORS. ...Respondents
Through Mr. Rajiv Nayyar and Mr. Sandeep Sethi,
Sr. Advocates with Mr. Darpan Wadhwa and
Mr. Kamal Mehta, Advocates for Respondent 1.
Mr. Harish Malhotra, Sr. Advocate with
Mr. Kanchan Singh, Advocate for Respondents 2-3.

CORAM:

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

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| 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 |

% **JUDGMENT**
08 -04-2008

MUKUL MUDGAL,J.

1. This appeal arises from the order dated 26th March 2008 passed by the learned Single Judge in EA No.128/2008 in Execution Petition No.181/2006, wherein the application of the appellant for the enlargement of time for making payments in terms of an earlier order of the learned Single Judge dated 7th February 2008 was dismissed. By the aforesaid order dated 7th February 2008 the learned Single Judge had granted the appellant four weeks by a pre-emptory order time to complete the formalities for release of a loan of Rs.18 crores from Punjab National Bank to enable the appellant to pay the balance sale consideration towards purchase of a property bearing No.208, Golf Links, New Delhi.

2. The facts of the case briefly stated are as follows:

a) Shri J. K. Mehra and Shri Prem Mehra were brothers. Shri Prem Mehra had predeceased Shri J. K. Mehra leaving behind his widow Mrs. Promila Mehra and two daughters Ms. Sabina Sablok and Ms. Rubina Mehra.

b) Ms. Promila Mehra being the widow of late Shri Prem Mehra filed a suit for permanent injunction against her brother-in-law Shri J. K.

Mehra being CS(OS) No.241/2004 and prayed for an injunction against him that he should not alienate the property bearing No.208, Golf Links and appropriate sale proceeds of the said property to his own use.

c) The aforementioned property admittedly belonged to late Shri H.L. Mehra, father of Shri J. K. Mehra and late Shri Prem Mehra. During the pendency of the suit a compromise was arrived at between them that the suit property bearing No.208, Golf Links will be sold to the highest bidder and its sale proceeds shall be apportioned amongst Shri J. K. Mehra and Mrs. Promila Mehra (widow of late Shri Prem Mehra) in equal shares.

d) Pursuant to the said compromise between the parties, the aforementioned property bearing No.208, Golf Links was put to auction sale before the Court on 15th February 2007 and the bid of M/s Vibes Developers Pvt. Ltd., being the highest bidder was accepted which was for an amount of Rs.30 crores. This amount of Rs.30 crores to be paid by the auction purchaser was to be shared equally by Shri J. K. Mehra and Mrs. Promila Mehra.

e) Out of Rs.30 crores, Rs.15 crores was paid by the auction

purchaser within time. On payment of the said amount the possession of the first and second floor portion was handed over to him. The balance Rs.15 crores could not be paid by the auction purchaser in time and on the request of the auction purchaser, time for payment of the said balance amount of Rs.15 crores was extended from time to time.

f) The matter regarding the time for payment of balance amount of Rs.15 crores went even upto the Division Bench and the Division Bench vide its order passed on 3rd October 2007 in EFA (OS) No.24/2007 granted four weeks time to the auction purchaser for payment of Rs.10 crores and six weeks time for payment of balance amount of Rs.5 crores. Rs.10 crores was to be paid by the auction purchaser directly to Shri J.K. Mehra and Mrs. Promila Mehra in equal shares and Rs.5 crores was to be deposited by it with the Registrar General of this Court to be released to the above mentioned co-owners on execution of the sale deed after conversion of the property in question from lease hold to free hold.

g) The appellant was unable to deposit the balance sale consideration within the time granted. An application was moved by the respondent in Execution Petition No.181/2006 being EA No. 567/2007 seeking

rescinding of the auction sale in respect of the property in favour of the appellant.

h) On 7th February, 2008, the Hon'ble Single Judge passed an order granting four weeks extension to the appellant for deposit of the balance consideration to enable the appellant to complete the formalities for release of the monies. It was further directed by the learned Single Judge that if the appellant failed to pay the balance amount within the extended period, the transaction would automatically stand closed without further reference to the Court.

i) The appellant filed an application before the learned Single Judge in Execution Petition No. 181/2006 being EA No. 128/2008 for the enlargement of time for the deposit of the balance consideration of Rs.15 crores plus the additional amount of Rs.50,00,000/- as directed by the Court in its order dated 7th February, 2008.

j) The aforesaid application was listed before the learned Single Judge on 26th March, 2008 who passed an order dismissing the appellant's application for grant of extension of time and directed the appellant to surrender the keys of the first and second floor of the

property which was in his possession and also directed the owner to immediately refund the amount of Rs.15 crores which has been paid by the appellants towards part consideration of the property.

3. The learned senior counsel for the appellant Mr.V.P. Singh in challenging this impugned order of the learned Single Judge dated 26th March, 2008 averred as follows:-

a. The delay in compliance by the appellant was only on account of the delay on part of the Punjab National Bank in completing formalities regarding release of monies.

b. The owners of the property despite repeated directions and undertakings had failed to make any effort to get the property converted into freehold and thus sought extension of time and denial of such extension of time to the appellant was unjust.

c. The appellant's offer for purchase of the property, was subject to the property being freehold, and in terms of the original sale order, the appellant was only required to pay the balance sale consideration on execution of the Sale Deed, on the Property being freehold, and in terms of the original sale order, the appellant was only required to pay the

balance sale consideration on execution of the Sale Deed on the property being converted to freehold.

d. Even after making the entire payment, the appellant would not get the title to the property, and till such time as the Sale Deed is executed, it would not have been in a position to deal with or dispose of the property inspite of having paid the entire sale consideration.

e. The appellant had made all bonafide efforts to make the payment and had even agreed to pay an extra amount of Rs.50 lacs to compensate the inadvertent delay on its part in making the payments.

f. The original payments of Rs.15 crores, had been made by the appellant promptly and without any delay and that the owners had been enjoying the benefits of the same for approximately an year.

4. The impugned order dated 26th March, 2008 dismissed the application filed by the appellant auction purchaser for extension of further time by proceeding in accordance with the order dated 7th February, 2008 which has not been challenged in this court. The principal plea of the learned senior counsel for the appellant is that as per the law laid down by the Hon'ble Supreme Court in ***Smt. Periyakkal and***

others vs. Smt. Dakshyani, AIR 1983 SC 428, the time granted under a consent decree in appropriate cases can be extended by the Court.

5. Mr. V.P. Singh, the learned senior counsel who appears on behalf of the appellant has submitted that the bank draft of the balance amount was ready on 18th March , 2008 and accordingly, in effect, the delay in compliance of the order was only about 12 days as four weeks' time was granted on 7th February, 2008. He further submitted that accordingly, extension of time sought being minimal, the court ought to have acceded to the request of the appellant in light of the judgment of the Hon'ble Supreme Court in *Smt. Periyakkal's case* (supra). He further submitted that there had been delay even on account of the respondent in handing over the possession leading to the grant of extension of time by the Court at the respondent's behest. In view of this background, he submitted that the judgment of the learned Single judge refusing to extend the time further operates harshly against the appellant who has managed to obtain a bank loan covering the balance amount required to be paid by him as evident from the bank draft dated 18th March, 2008.

6. The learned senior counsel for the respondent Shri Rajiv Nayar on

the other hand submitted that this is not a simple case of extension of time sought for the first time by the appellant auction purchaser. He consequently, narrated the following dates which according to him showed that the learned Single Judge having repeatedly granted extensions of time to the appellant, no further extension of time in the interest of justice was warranted because of not only the hike in prices of the present property, for which offers of Rs.42 – 45 crores had already been received by them instead of Rs.30 crores offered by the appellant, but also due to the passage of time occasioned by the repeated extensions sought by the appellant and the corresponding rise in prices of properties which could have been bought from the sale proceeds of the suit property by the amount available to each of the respondents and the receipt of the said balance amount of Rs.15 crores no longer reflected the current market price. Mr. Nayyar submitted that the auction sale was conducted on 15th February, 2007 and a sum of Rs.15 crores was paid in April, 2007 and on 25th July, 2007 another direction was given to the appellant to pay the balance sale consideration. On 3rd September, 2007, the appellant was directed to deposit the entire balance consideration within four weeks i.e.

on or before 1st October, 2007 which order was not complied with and instead was challenged before the Division Bench of this Court and in the Division Bench, the appellant was directed to deposit the sum of Rs.10 crores by 31st October, 2007 and Rs.5 cores by 14th November, 2007. In November, 2007, the learned Single Judge was informed that the application has been filed for extension of time before the Division Bench. The matter was adjourned and eventually the application for extension was not got listed. Finally, inspite of the aforesaid delay by the appellant, on 7th February, 2008, the pre-emptory order was passed granting the appellant two weeks' time and the order categorically stated that in case the deposit is not made within the stipulated time, the auction sale shall be set aside. The appellant was required to deposit the keys of the portion of the property held by it and the respondents were directed to pay a sum of Rs.15 crores to the appellant, already received by them.

7. Since this order was not complied with within the specified period of four weeks, on 17th March, 2008, the respondent filed an application for directions to the appellant to restore the keys in view of the default committed by the appellant as per the order dated 7th February, 2008 and

the said application was listed on 18th March, 2008 in Court where the appellant inspite of advance notice chose not to appear and on the same date filed the application for extension of time leading to the impugned order dated 26th March, 2008.

8. In our view, while the position of law laid down by the Hon'ble Supreme Court in *Smt. Periyakkal's case* (supra) is clear that the time granted by consent decree can be extended in appropriate cases, nevertheless we have to see as to whether the present case is such an appropriate case. While the respondents had sought extension of time to hand over the possession of the property, nevertheless by the order dated 25th July, 2007, the Court noticed that the agreement of the parties recorded on 7th May, 2007 that the conversion of the property from lease hold to free hold would not be linked to the handing over of the possession of the property on or before 16th June, 2007 when the sale consideration was to be paid and the sale deed executed.

9. It is not in dispute that the bank draft is dated 18th March, 2008. It is also significant to note that the application for extension of time was not made within the period of four weeks stipulated in the pre-emptory

and self-operative order dated 7th February, 2008. It is only after the application was filed by the respondent for rescinding of the auction purchase on 17th March, 2008, that the appellant filed the application for extension of time leading to the impugned order dated 26th March, 2008. Thus, quite apart from the fact that several extensions have already been granted to the appellant, the conduct of the appellant does not appear to display sufficient promptness, willingness and desire to comply with the time bound directions of the learned Single Judge.

10. Furthermore, we cannot lose sight of the fact that the order of 7th February, 2008, which was pre-emptory in nature and granted a last opportunity to the appellant, has become final and is not even the subject matter of the challenge in this appeal. Consequently, while it cannot be disputed that the court in appropriate cases has the jurisdiction to extend the time granted by the consent decree, we are also of the view that this is not an appropriate case where further extension of time should be granted in view of the persistent defaults of the appellant. The Division Bench vide order dated 25th July, 2007 in EFA(OS) No. 18/2007 observed as follows:-

“3. The appellant was also directed to hand

over the possession of the Ground Floor of the suit premises by depositing the keys in the Court. When the matter came up before the learned Single Judge on 15th February, 2007, it was agreed between the parties that vacant peaceful possession of the said portion would be handed over to the purchaser at the end of three months from that day or once the property is converted into freehold whichever is earlier, subject to certain conditions stipulated in that order. However, thereafter on 7th May, 2007 this order was modified with the consent of the parties. It was agreed by the parties that conversion of property from leasehold to freehold would not be linked to the handing over to the possession of the property and the property would be handed over to the purchaser on or before 16th June, 2007 when the sale consideration will also be paid and the Sale Deed would be executed. It was also clarified that in case Sale Deed can not be executed, the major balance sale consideration shall be paid to the parties except a small amount out of the sale consideration, which shall be deposited in the Court, to ensure the presence of the parties to complete the sales transactions. The learned Single Judge also observed that the amount which is to be deposited in the Court shall be decided on the next date of hearing which was fixed as 15th May, 2007.”

(emphasis supplied)

11. While prior to 7th May, 2007, as noted in the order dated 25th July, 2007, there may have been some substance in the plea of the learned counsel for the appellant that the conversion to free hold was a sine qua non for the balance payment but since the order of the Division Bench

dated 25th July, 2007 clearly noted that agreement of the parties recorded on 7th May, 2007 delinked the issues of the balance payment and the conversion of the property to freehold, and consequently the defaults in payment thereafter cannot be explained on the basis of the property not having been made free hold.

12. Furthermore the same learned Single Judge who passed the pre-emptory order dated 7th February, 2008 himself refused to exercise his discretion to extend the time by the impugned order dated 26th March, 2008 and this refusal to exercise such discretion by the learned Single Judge is not such so as to warrant reversal by the Division Bench.

13. Accordingly, the appeal is dismissed and the order dated 26th March, 2008 is affirmed. However, while dismissing the appeal, equity and the interest of justice demands that Rs.15 crores which was paid by the appellant to the respondent in May 2007 and has remained with them till today and which amount consequent to the non-compliance of the order of 7th February, 2008 and dismissal of this appeal was required to be returned to the appellant, should be paid back with interest by respondents no. 2 and 3. We do so because not only had the respondents

no.2 and 3 enjoyed this sum from May 2007 up to date, but they had prior to 7th February, 2008 also sought extensions of time. Furthermore, they have admittedly received offers upto Rs.45 crores for the property in dispute which are at least 50% more than the sum of Rs. 30 crores agreed to be paid by the appellant. Accordingly, while dismissing the appellant's appeal, in order to balance the equities, we direct that while refunding the amount of Rs. 15 crores, within four weeks from today, the respondents no. 2 and 3 would refund it to the appellant with the simple interest @ 6% per annum. The appeal is thus dismissed and stands disposed of accordingly.

MUKUL MUDGAL
(Judge)

April 08, 2008
kkb/sk/dr

ARUNA SURESH
(Judge)