

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

+ RFA 124/2006

% *Date of Order : 19.11.2008*

M/S RIVIERA APARTMENTS P.LTD. Appellant
Through: Mr. Dinesh Garg, Advocate

versus

RATTAN GUPTA & ANR. Respondents
Through: Mr. Anurag Kumar Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE J.R.MIDHA

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

: PRADEEP NANDRAJOG, J.(Oral)

1. Heard learned counsel for the parties.
2. Respondent No.1 Ratan Gupta, the plaintiff had booked a flat with the appellant and had paid Rs.15,00,000/- on various dates to the appellant. Having received back Rs.15,00,000/- and having executed a receipt, Ex.PW-1/DX1, as also having executed a no claim certificate, Ex.PW-1/DX2, both dated 30.11.1996 he proceeded to file a suit for recovery of Rs.7,12,000/- impleading appellant as defendant No.1 and one Rajiv Kumar as defendant No.2. He stated in the plaint that notwithstanding the receipt and the no claim certificate recording a full and final settlement between the parties, it

was agreed between him and the appellant that he would be paid interest on Rs.15,00,000/- which he had paid from time to time to the appellant interest being @ 24% per annum and that apart from the payments made by cheque to the appellant he had paid Rs.2,00,000/- in cash at the time of booking of the flat which amount was stated to have been agreed to be repaid to him. Defendant No.2 was stated to be the broker who had finalized the deal.

3. In this manner, claiming Rs.5,12,000/- as the stated interest and Rs.2,00,000/- as return of the advance payment stated to have been paid in cash, suit was filed for recovery of Rs.7,12,000/-.

4. Needless to state the defence of the appellant was that no money was received in cash and that the respondent No.1 was the defaulting party under the contract which entitled appellant to forfeit the money received but as a measure of good-will the same was returned without any forfeiture. Any agreement to pay interest much less @ 24% per annum on the amounts received by the appellant from respondent No.1 was denied.

5. Ex.PW-1/DX1 reads as under:-

“Received from M/s RIVIERA APARTMENTS PVT. LTD.
Rs. 15 Lacs (Rupees fifteen Lacs only) vide Bankers
Cheque No.042190 dated 14-11-1996 in full and final
refund of the entire amount paid to M/s RIVIERA
APARTMENTS PVT. LTD., paid over a period of time

as follows:-

<u>S.No.</u>	<u>Date</u>	<u>Receipt No.</u>	<u>Amount</u>
1.	30-04-96	3887	Rs.2,00,000.00
2.	06-05-96	3888	Rs.2,00,000.00
3.	09-05-96	3890	Rs.1,00,000.00
4.	01-08-96	3897	Rs.5,00,000.00
5.	17-09-96	3906	Rs.5,00,000.00
Total			Rs.15,00,000.00

I confirm that the booking of the Dupliex Unit No.4 in the proposed project at Bungalow No.1, "VIVEK", 45, Mall Road, DELHI-110054 made by me vide the Company's Booking Confirmation letter dated 30-04-1996 has been cancelled by me and this amount is being received in full and final consideration of my own free will without any pressure or compulsion.

After the receipt of this amount, I acknowledge that I do not have any claim or lien on the said booking as Company is free to deal with the same in any manner they deem fit. I further confirm that I have been fully satisfied with the dealings of the Company with me and in an amicable manner I am hereby withdrawing my booking after having received the full refund of the amounts paid to them. This receipt is binding on all my successors and heirs and no one shall claim any privileges or dues from the Company but in case there is any such claim, or any demand, I will cover the Company against all such harms, costs and expenses and shall keep them indemnify fully against any such proceedings by any individual claiming through or under me."

6. Ex.PW-1/DX2 reads as under:-

"NO CLAIM/LIEN RECEIPT"

I, Rattan Gupta, R/o 30, North, Riviera Apartments, Mall Road, Delhi-110054, do hereby confirm that pending matter with regard to booking of proposed unit No.4 at Bungalow No.4, The Mall, Delhi, has since been resolved between me and M/s Riviera Apartments Pvt. Ltd. I have

received the refund of the amount paid by me. All bookings, agreements, correspondences, notices, etc. pertaining to the said unit No.4 stands cancelled/withdrawn. Now, I am left with no claim of any nature whatsoever on any account whatsoever either against Unit No.4 or against M/s Riviera Apartments Pvt. Ltd.

I further confirm that I did not enter into any further agreement or arrangement with any person whatsoever with regard to the said unit or based on the said booking in my favour and if M/s Riviera Apartments Pvt. Ltd. suffers any loss/damages because of my any act or conduct, I shall be responsible to reimburse the same and to keep M/s Riviera Apartments Pvt. Ltd. fully indemnified.

IN WITNESS WHEREOF, this receipt-cum-no claim/lien receipt is executed at Delhi on this 30th day of November 1996 in the presence of witnesses.”

7. In view of the fact that the two documents record a full and final satisfaction of the claim in respect of the advances received by the appellant from respondent No.1 the learned Trial Judge has returned a finding that the question of payment of any interest on said deposits does not arise.

8. No cross objections or cross appeal has been filed by respondent No.1. Thus, said finding has attained finality.

9. But, in respect of the claim of Rs.2,00,000/- stated to have been paid in cash, holding that the evidence establishes said payment being made, suit has been decreed in sum of Rs.2,00,000/- with interest @ 9% per annum on said amount from the date of institution of the suit till realization.

10. The reasoning of the learned Trial Judge to hold that Rs.2,00,000/- was paid in cash is two fold. Firstly, that defendant No.2, Rajiv Gupta, who was examined as PW-2 supported the case of respondent No.1 that when the deal was finalized a sum of Rs.2,00,000/- was paid in cash. The second reasoning of the learned Trial judge is on a question put by the appellant to PW-1 on cross examination. The same is a suggestion to PW-1 to which the answer is as under:-

“I do not know if defendant No.1 had paid a sum of Rs.2,00,000/- to the defendant No.2 or not.”

11. Picking on the said suggestion, the learned Trial Judge has noted as under:-

“Strangely enough, a suggestion was put to the plaintiff if he knew as to whether defendant No.1 had paid a sum of Rs.2,00,000/- to defendant No.2 or not. The plaintiff had denied any knowledge about this but had asserted that he had not received the said amount till date. The aforesaid suggestion tends to show that defendant No.1 had paid the aforesaid sum of Rs.2,00,000/- (paid in cash by the plaintiff to defendant No.1 on 30.4.1996) to defendant No.2 for the purpose of refunding it to defendant No.1.”

12. Learned counsel for the appellant has drawn our attention to the deposition of the plaintiff who appeared as PW-1. In para 18 of his deposition by way of an affidavit towards examination-in-chief, the plaintiff deposed as under:-

“I later on followed up the matter with defendant No.2 who assured me that he will take up the said matter with defendant No.2 to this effect also an affidavit was sworn by the defendant No.2 that an amount of Rs.2 lacs was paid in cash by me to the Defendant No.2.”

13. Learned counsel for the appellant urges that admittedly neither is there a receipt evidencing payment of Rs.2,00,000/- in cash by the respondent No.1 to the appellant nor has the said sum been reflected in the income tax return or account books of respondent No.1 who is stated to be a chartered accountant, a fact not in dispute.

14. Learned counsel for the appellant urges that in view of the deposition of PW-1, the suggestion put to him cannot be labeled as a strange suggestion and no adverse inference can be drawn against the appellant. Counsel further urges that the receipts Ex.PW-1/DX1 and the no due certificate Ex.PW-1/DX2 are both dated 30.11.1996 and record in no uncertain terms that the respondent No.1 i.e. the plaintiff had received the full amount and that there was a complete satisfaction of his claim. Counsel further urges that in the absence of any receipt evidencing payment of Rs.2,00,000/- to his client the oral testimony of the witnesses of the plaintiff are rendered meaningless.

15. Learned counsel for the respondent states that in his deposition, the plaintiff stated that he had made payment directly to the appellant and explains the averments in para 18 of the affidavit as a mistake. Counsel states that PW-2 was a broker and had no animus against either party and being an

independent person there is no reason to disbelieve his testimony.

16. It is apparent that the second reasoning given by the learned Trial Judge is ex-facie wrong. Be it a mistake, the fact of the matter remains that in para 18 of the affidavit by way of evidence the plaintiff stated that he had paid the amount in cash to defendant No.2. Lest said assertion remained unchallenged the defendant No.1 i.e. the appellant rightly questioned the witness whether he found out from defendant No.2 of his having further parted with the money.

17. Pertaining to the second reasoning of the learned Trial Judge that the testimony of PW-2, a neutral person, requires to be believed, suffice would it be to state that the plaintiff i.e. respondent No.1 being a chartered accountant is expected to know the value of a receipt. Further, he admitted being an income tax payee and conceded in his testimony that he had not reflected said payment of Rs.2,00,000/- for the purposes of income tax returns. We note that the receipts Ex.PW-1/DX1 and the no due certificate Ex.PW-1/DX2 are both dated 30.11.1996. They record a complete accord and satisfaction between the parties. It is not the case of respondent No.1 that he was coerced into executing the documents.

18. The theory of a distinct oral agreement of return of

Rs.2,00,000/- is unbelievable for the reason we find no documentary evidence, post 30.11.1996, wherein respondent No.1 has raised a grievance, with reference to the alleged oral agreement, of the appellant not paying to him Rs.2,00,000/-. We note that the suit was instituted on 24.5.1997 i.e. after nearly 6 months of 30.11.1996.

19. We hold that the learned Trial Judge has erred in appreciating the evidence by ignoring the features which we have noted hereinabove.

20. The appeal is allowed.

21. Impugned judgment and decree dated 18.11.2005 is set aside.

22. Suit filed by respondent No.1 is dismissed.

23. Appellant shall be entitled to cost all throughout.

24. Money lying in deposit being deposited by the appellant together with the accrued interest thereon is directed to be returned to the appellant. The Registry shall endorse the fixed deposit receipt in the name of the appellant and shall hand over the same to the counsel for the appellant.

PRADEEP NANDRAJOG, J.

J.R.MIDHA, J.

NOVEMBER 19, 2008
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