

IN THE HIGH COURT OF DELHI

FAO No.464/2007

Shri Govind Sarda Appellant
! through: Mr.V.P.Singh, Sr. Advocate with
Mr.Aseem Mehrotra, Mr.A.K.Jain,
Mr.Ramesh Khatri, Mr.Amit Kasera,
Advocates

VERSUS

\$ M/s. Sartaj Hotels Apartments &
^ Villas Pvt. Ltd. & Ors. Respondents
through: Mr.Valmiki Mehta, Sr.Advocate with
Ms.Jaya Goel, Mr.Kapil Gupta for
respondents 1 to 4

RESERVED ON: 12.02.2008

% DATE OF DECISION: 03.03.2008

CORAM:

*** Hon'ble Mr.Justice Pradeep Nandrajog**

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 judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.**

1. The appellant is aggrieved by the order dated 17.12.2007 dismissing appellant's application under Order 39 Rule 1 and 2 CPC and allowing application under Order 39 Rule 4 CPC filed by defendants 2 to 4.
2. Appellant's suit seeks a decree of declaration and

injunction. Interim relief prayed for was to restrain the defendants from alienating or encumbering 20 acres of land in Village Rangpuri.

3. Briefly stated, case of the appellant is that first respondent, impleaded as defendant No.1 is a company incorporated under the Companies Act and owns approximately 20 acres of land in Village Rangpuri. That respondents 2 to 4, impleaded as defendants 2 to 4 were the directors of the company and were desirous of developing the land owned by the company by constructing a motel and service apartments thereon. It was pleaded that in the month of May and June, 1996 the respondent No.1, through its directors desired financial participation in the implementation of its project and accordingly appellant and said defendants entered into a MOU dated 25.6.1996. Salient features of the MOU were that land price was fixed at Rs.8001/- per sq. yd. and that within 30 days appellant would obtain necessary permissions/sanctions for construction of a motel and service apartment. That plaintiff would invest money for the construction and would pay Rs.2 crores to the defendants at the time of the signing of the MOU. Further Rs.5 crores would also be paid up front when plans were approved. That after construction of the service apartments was over, the same

would be sold. That after refunding Rs.7 crores to the plaintiff, the profits would be shared in the ratio 40% for the plaintiff and remaining for the company.

4. It was further pleaded that after the MOU was signed, the defendants 1 to 4 approached one Union General Company, 21-A, Shakespeare Sarani, impleaded as defendant No.5, for finance which also became a partner in the project. It was further alleged that on 8.7.1997 it was agreed to amend the terms of the MOU and that on 30.8.1997 a fresh MOU was entered into as per which instead of advancing Rs.2 crores, only Rs.1 crore was to be advanced. Similarly, instead of Rs.5 crores to be pumped in when sanction was obtained, only Rs.1 crore would be pumped in. It was recorded that Rs.51 lacs stood paid as advance and that Rs.49 lacs would be paid within 45 days. It was further alleged that further amendments were incorporated when MOU dated 26.12.1997 was executed. That as per amendment incorporated vide MOU dated 26.12.1997 Rs.49 lacs required to be paid as per MOU dated 30.8.1997 would be paid by 3.4.1998. It may be noted here that the said MOU introduced a totally new term pertaining to 4 acres land for which plaintiff was to hold negotiations with the owners thereof and purchase the same. It may be further recorded here that relevance of said clause in the MOU remains a

mystery. No particulars of the land nor name of owner thereof has been recorded. It may further be noted that as per the revised MOU dated 26.12.1997 it was stipulated that construction would commence within 5 months.

5. It was further pleaded that the Union General Company Ltd., (impleaded as defendant No.5) cancelled the agreement which it had entered into with defendant Nos.1 to 4 and filed a suit in the Calcutta High Court claiming refund of Rs.51 lacs paid by it. It was further pleaded in the plaint that after 4 years, plaintiff has managed to obtain necessary clearances and that the defendants have turned dishonest. It was pleaded that as a result of the agreements between the parties, either a partnership has come into being or a joint venture agreement has come into being. Prayer made in the suit is as under :-

“a) Declaration that the plaintiff is a partner in the partnership of the Joint Venture/Project of construction of a 5 star Hotel and service apartments on the land measuring 20 acres situate in Village Rnagpuri, Distt. South West, New Delhi, which is a partnership property and asset and that in view of undertaking the obligations to be performed by the plaintiff vide Memorandum of Understanding of Partnership dated June 25, 1996, August 13, 1997 and December 26, 1997, as amended from time to time, the plaintiff being a partner is entitled to jointly develop and to receive all benefits,

advantages whatsoever in the suit property and lands of village Rangpur which are subject matter of development under the respective Memorandum of Understanding of partnership;

aa) Declaration that the plaintiff being a partner has acquired right, title and interest in the partnership property of the aforesaid 20 acres of land situate in village Rangpuri which had been contributed by the defendant No.1 towards capital of the partnership and being a partner the plaintiff has become one of the co-owners alongwith the defendant No.1 of the aforesaid suit property and the defendants have no right or authority to sell, transfer and convey the said lands/property and or any part thereof to any person or create any third party rights;

b) Declaration declaring that the alleged forfeiture of the amounts paid by the plaintiff as alleged in the letter dated 15.5.2000 is void, wrongful, illegal and unenforceable;

c) Declaration declaring that the two registered sale deeds both dated 11.5.2000 purportedly executed on behalf of the defendant No.1 in favour of the defendant No.2 are void, bad in law and liable to be cancelled.

d) Permanent injunction restraining the defendant Nos.1 to from dealing with and/or disposing of and or parting with possession of the suit property and or from creating any third party interest in any manner whatsoever in respect of the said property or any portion thereof.

e) Permanent injunction restraining the defendants from interfering with and or disturbing the joint possession of the

plaintiff with the defendant No.1, in respect of the suit property namely 20 acres of lands situate in village Rangpuri, Distt. South West, New Delhi, being the partnership asset or asset of Joint Venture;

f) Mandatory injunction directing the defendant No.1, 2 and 3 to sign the revised building plans and various other applications, documents, papers and affidavits which are necessary and required to be submitted for obtaining necessary permissions, sanctions/approvals for construction of a Five Star Hotel/Motel and the service apartments in the aforesaid suit lands from the various competent authorities. In case, the defendant do not sign the plans or documents or any of them, an officer of this Hon'ble Court be appointed to sign the such revised plan, documents which are necessary and required to be submitted to the various competent authorities for obtaining necessary approvals and permissions; Be passed in favour of the plaintiff and against the defendants.

g) Receiver be appointed to take possession of the assets and properties of the joint venture/partnership including 20 acres of lands in the village Rangpuri and manage the same under the directions of this Hon'ble Court, till disposal of the suit;

h) Costs.

i.) Such further or other order which this Hon'ble deems fit and proper in the facts and circumstances of the case."

6. In their written statement defendants 1 to 4 have pleaded that the plaintiff is in default and no approval has been obtained by the plaintiff pertaining to the project in question.

That plaintiff is in default, in that, only Rs.51 lacs have been paid. Balance Rs.49 lacs payable as per the revised MOU has not been paid. That plaintiff and defendant No.5 are one and the same entity, in that, defendant No.5 is a company controlled by the plaintiff. It is pleaded that the address mentioned in the MOU dated 25.6.1996 being that of the plaintiff is the same as the registered office of defendant No.5, namely, 21-A, Shakespeare Sarani, Calcutta. Said defendants pleaded that due to defaults committed by the plaintiff, defendants 1 to 4 have suffered damages and hence have forfeited Rs.51 lacs. It is further pleaded that on the same payment, defendant No.5 had sued for recovery of Rs.51 lacs in the Calcutta High Court and in respect thereof the defendants have furnished a bank guarantee in sum of Rs.51 lacs as ordered by the Calcutta High Court.

7. The learned Trial Judge has declined interim injunction holding that prima facie the suit is not maintainable under Section 69(1) of the Partnership Act as the basis of the suit is a partnership resulting from the Memorandum of Understanding. It has been held that the partnership is not registered. Second reason given is that the plaintiff has not approached the court with clean hands in as much as for the same sum, defendant No.5, a company controlled by the

plaintiff, has sued in the Calcutta High Court. Additional reason in support of the second reason given is that the plaintiff was refusing to divulge the details of Rs.51 lacs which plaintiff claims to have paid with further claim of the plaintiff that this payment was different than Rs.51 lacs paid by defendant No.5.

8. During arguments I restricted learned counsel for the parties to make submissions other than submission relating to whether as a result of the MOUs a partnership has come into existence or not. My reason thereof was that the said issue is a subject matter of a separate miscellaneous petition filed in this court wherein order dated 11.10.2006 passed in the suit between the parties is under challenge. Vide said order dated 11.10.2006, application under Order VII Rule 11 CPC filed by the defendants for rejection of the plaint was dismissed. Prima facie view taken was that the plaintiff has not sued as a partner but has sued for a declaration that he be declared a partner of the firm.

9. Learned counsel for the parties fairly conceded that said issue i.e. relating to the nature of the suit would be decided in the petition challenging the order dated 11.10.2006.

10. The principles of grant of ad-interim injunction are well known. The trinity of prima facie case being established by the plaintiff, irreparable loss and injury caused to the

plaintiff if injunction is refused and balance of convenience in favour of the plaintiff need to be prima facie established before a plaintiff succeeds in obtaining an interim injunction.

11. On the issue of prima facie case suffice would it be to state that the execution of the MOUs referred to in the plaint has not been denied. However, it has to be noted that under the revised MOU dated 26.12.1997 plaintiff was to pay Rs.1 crore in two stages. Rs.51 lacs stood paid. Rs.49 lacs had to be paid by 3.4.1998. Said sum of Rs.49 lacs has admittedly not been paid. Further, construction cost had to be borne by the plaintiff. Not a penny has been spent on construction. Admittedly, only Rs.51 lacs have flown to the coffers of defendant No.1. Even that sum of Rs.51 lacs is doubtful vis-a-vis the source thereof. It would be interesting to note that the plaintiff claims to have paid Rs.51 lacs when the MOU dated 25.6.1996 was executed. For a similar sum, defendant No.5 has laid claim for Rs.51 lacs to be refunded. Address of the plaintiff disclosed in the MOU dated 25.6.1996 is 'resident of 21-A, Shakespeare Sarani, Calcutta'. The same is the address of defendant No.5. It is important to note that when called upon to disclose the particulars of how plaintiff paid Rs.51 lacs to defendant No.1, plaintiff has failed to do so.

12. Prima facie, plaintiff and defendant No.1 appear to

be staking a claim on the same sum of Rs.51 lacs. Thus, defendant No.5 having filed a suit in the Calcutta High Court and having secured Rs.51 lacs in said suit, under a bank guarantee, prima facie negates a prima facie case in favour of the plaintiff herein in respect of the sum of Rs.51 lacs.

13. It has further to be noted that the MOUs were signed and revised between the year 1996 till the year 1997. Necessary sanctions had to be obtained if not within 5 months as stipulated in the last MOU dated 26.12.1997, at least within a reasonable period of time. Till date, sanctions from the authorities has not seen the light of the day.

14. As noted above, 20 acres of land belonging to defendant no.1 was valued @ Rs.8001/- per sq. yd. Plaintiff's contribution had to be in crores for the reason a motel and a service apartment block had to be constructed on the land. Thereafter, the parties were to share the profits as stipulated in the memorandum of understandings. It would be against equity to injunct the defendants from dealing with their land even assuming that plaintiff has parted with Rs.51 lacs for the reason plaintiff's participation at this stage is too meager.

15. The facet of prima facie case, in the facts and circumstances, has an inherent feature of irreparable loss and injury being caused to the defendant Nos.1 to 5 if injunction is

granted.

16. As already noted above, plaintiff has prima facie failed to satisfy this Court of having spent any money on the project. There is no evidence that plaintiff has spent any money while obtaining permissions from Government Departments. Defendant Nos.1 to 4 have received only Rs.51 lacs. Said sum of Rs.51 lacs has been secured in favour of defendant No.5 in the suit filed by defendant No.5 in the Calcutta High Court. In my opinion, non-grant of an injunction would hardly cause any irreparable loss and injury to the plaintiff which cannot be made good if the suit filed by the plaintiff ultimately succeeds.

17. On the issue of balance of convenience, suffice would it be to state that @ Rs.8001/- per sq. yd. for 20 acres of land, the value thereof comes to approximately Rs.77.6 crores. Assuming plaintiff has paid Rs.51 lacs to the defendant Nos.1 to 4, his total contribution would be about 1% towards the pooled assets. The balance of convenience clearly lies in favour of defendant Nos. 1 to 4.

18. The issue can be looked at from another angle. If there exists a partnership between the parties, remedy of the plaintiff is to sue for dissolution and rendition of accounts. If such a suit is filed, that plaintiff contributed only Rs.51 lacs

towards the capital of the firm would obviously stare the plaintiff in his face. The plaintiff would be entitled to return of his capital. Indeed, partnership business has yielded no profits till date. Thus, the capital i.e. the land under any circumstances would revert to defendants 1 to 4.

19. Alternatively, plaintiff may sue for damages. In said suit it would be a relevant consideration that plaintiff's contribution has been meager.

20. Looked at from any angle, no case is made out in equity to grant the interim injunction prayed for by the plaintiff.

21. The appeal is dismissed.

22. Costs shall follow.

March 03, 2008
vg

PRADEEP NANDRAJOG
JUDGE