

**REPORTABLE**

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

**R.F.A. No.223/2000**

**Date of Decision: September 25, 2009**

SMT. KAMLESH AGARWAL AND ANR.

..... Appellants  
Through Dr. Anurag Kumar Agarwal, Advocate  
with Mr. Umesh Mishra, Advocate

versus

E.C.E. INDUSTRIES LTD  
Through None

..... Respondent

**CORAM:**  
**HON'BLE MISS JUSTICE REKHA SHARMA**

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

**REKHA SHARMA, J.**

The short question which arises in this appeal is whether the suit filed by the appellants primarily for specific performance of an 'Agreement to Sell' was barred by the law of limitation. The learned Additional District Judge who tried the suit has held the same to have been instituted after the expiry of the period of limitation. The appellants feel it was filed within limitation.

Before I come to the point in issue, it is necessary to refer to a few facts:

It is not in dispute between the parties that an 'Agreement to Sell' dated June 15, 1977 was entered into between them and thereby the respondent had agreed to sell and transfer to the appellants flat

measuring 634 Sq. ft. on the first floor of building known as ECE House (Main Building) situated at 28, Kasturba Gandhi Marg, New Delhi inclusive of 49.70 Sq. ft. of proportionate area in the passage and WC together with all manners or rights, liberties, easements, privileges, advantages, emoluments, appendages and appurtenances whatsoever but subject to the tenancy of M/s. Macneill and Magor Limited. It is also not in dispute that the entire sale consideration of the flat amounting to Rs. 1,80,690/- was paid in full to the respondent at the time of execution of the 'Agreement to Sell' and that as the flat was under the tenancy of M/s. Macneill and Magor Limited only symbolic possession of the same was delivered to the appellants. It transpires from the averments made in the plaint that the respondent had not only entered into an 'Agreement to Sell' with the appellants, but also with 41 other persons in respect of the entire first floor of the aforementioned premises. It also transpires that the respondent had been acting as Estate Manager to all the purchasers including the appellants inasmuch as it was collecting rent on their behalf and had been disbursing the same in proportionate shares to each one of them. The respondent in the written statement filed by it did not dispute this fact but denied that it was acting as an Estate Manager. As per the respondent, since it had only entered into 'Agreements to Sell', it remained the absolute owner of the property and thus could not be referred to as Estate Manager.

It is the case of the appellants that they had approached the respondent on various occasions to execute the sale deed in their favour but to no avail. Initially, the respondent avoided on the pretext that permission was required to be obtained under the provisions of the Urban Land (Ceiling and Regulation) Act, but subsequently it

conceded that no such permission was required. And yet, no sale deed was executed. On September 01, 1989 the appellants were told by means of a letter from the respondent that since they had not purchased proportionate land of their flat, the sale deed could not be executed immediately. Nothing much happened thereafter till February 28, 1995 when the appellants sent a legal notice to the respondent calling upon it to approve the draft sale deed annexed thereto and take further necessary steps for execution and registration of the sale deed. The notice so given evoked no response from the respondent. Hence, the suit for specific performance of the agreement to sell dated June 15, 1977 as well as for a decree of declaration that the appellants were the sole and absolute owners of the aforementioned flats and a decree for permanent and mandatory injunction restraining the respondent from selling, disposing of, transferring or alienating the flat in question. In the alternative, appellants claimed the relief for refund of the entire sale consideration of Rs.1,80,690/- along with interest @ 18% per annum and the difference between the agreed price and market price of the flat on the date of passing of the decree. The suit was filed on July 07, 1995.

The learned Additional District Judge on the pleadings of parties framed the following issues:-

- 1) Whether the plaint has been signed, verified and suit is instituted by duly authorized persons? OPP
- (2) Whether the plaintiff has entered into agreement with the defendant on 15.6.1977? OPP
- (3) Whether the plaintiff is in formal possession of the suit property? OPP
- (4) Whether the plaintiff has paid the entire consideration to the defendant in respect of the suit property? OPP

- (5) Whether the defendant has been collecting rent from M/s. Macneill and Magor Limited in lumpsum and disbursing the same to the plaintiff @ Rs. 10 per sq ft.? OPP
- (6) Whether defendant has been acting as Estate Manager of the property? OPP
- (7) Whether the suit is time barred? OPD
- (8) Whether the defendant has acknowledged the ownership of plaintiff from time to time of suit property? OPP
- (9) Whether the plaintiff is stopped from filing the present suit? OPD
- (10) Whether the plaintiff is entitled for the relief of specific performance, declaration, or injunction as prayed? OPP
- (11) Relief.

All the issues except issues No.6, 8 and issues No.10 & 11 which were in the nature of reliefs were decided in favour of the appellants.

In so far as issues no. 6 and 8 are concerned, the appellants had alleged that the respondent was acting as their Estate Manager as it had been collecting rent on their behalf from the tenant M/s. Macneill and Magor Limited and had been negotiating with the said tenant in respect of the renewal of their lease or to take other steps to get the premises vacated from the tenant. The appellants thus further alleged that the respondent virtually treated them as owners and hence, they were entitled to be declared as such. The learned Additional District Judge has not found the averments so made to be false and yet has denied the relief to the appellants on the ground that as no sale deed has been executed in their favour by the respondent, it continues to be the owner of the premises and as such, neither it can be said to be acting as Estate Manager on behalf of the appellants nor the appellants could be declared as owners. Hence, these two issues were decided against the appellants and in my view, rightly.

The appellants could not have acquired the status of owners and the respondent could not be reduced to the status of an Estate Manager till such time the sale deed was executed for it is only then that the title of ownership of flat would have passed on from the respondent to the appellants. Hence, no fault can be found with the decision of the trial Judge on these issues.

Before I proceed to deal with issue No.7, which is the core issue, it may be noticed that the respondent has neither challenged the findings which have gone against it nor it has come forward to contest the appeal filed by the appellants.

Now, coming to the question of limitation, which is the subject matter of issue No.7, I find that the learned trial Judge while holding that the suit filed by the appellants was barred by the law of limitation has solely relied upon exhibit PW-1/M which as noticed above was a letter from the respondent to the appellants dated September 01, 1989. As per the trial Judge, by means of the said letter the respondent refused to act upon the 'Agreement to Sell' dated June 15, 1977 and, therefore, in terms of Article 54 of the Limitation Act, 1963, the appellants ought to have filed the suit within three years of such refusal which they did not do and hence, the suit was barred by time.

The period of limitation for filing a suit for specific performance of contract as provided in Article 54 of the Limitation Act is three years and this period of three years is to be calculated **"from the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."** There is no dispute that in so far as the present 'Agreement to Sell' is concerned, no date was fixed for performance. Therefore, it is the

later part of Article 54 which will govern the period of limitation, i.e., “when the plaintiff has notice that performance is refused.” In this view of the matter, the question that arises for consideration is whether the letter dated September 01, 1989 constitutes refusal on the part of the respondent. The relevant part of the letter in question reads as under: -

“Further please note that since you have not purchased the proportionate land of your flat, your registration of sale deed cannot be executed immediately.”

It will be seen from the aforequoted paragraph that the respondent did not specify as to which was that proportionate land of their flat which the appellants had not purchased and in so far as the ‘Agreement to Sell’ is concerned, it does not talk of any proportionate land that the appellants were required to purchase. Hence, what was stated in the letter dated September 01, 1989 Ex.PW-1/M was outside the terms and scope of the ‘Agreement to Sell’. It was, therefore, not open to the respondent to put any pre-condition to the execution of the sale deed which was not borne out from the terms of ‘Agreement to Sell’. Be that as it may, the letter in question could not be construed as refusal on the part of the respondent to execute the ‘Agreement to Sell’. It simply stated that the execution could not be done immediately. It did not rule out execution at a future date and time. Therefore, it did not tantamount to refusal. A refusal has to be clear, unequivocal, cut and dry. The letter gave no such signal or indication. The learned trial Judge, thus, misconstrued the text of the letter and wrongly held that the respondent thereby refused to execute the ‘Agreement to Sell’.

It will not be out of place to mention that as per the learned counsel for the appellants, even after the appellants had sent legal

notice to the respondent calling upon it to execute the sale deed in their favour, respondent till date is collecting rent on their behalf from the tenant and depositing the same in their bank account. What does this show? It shows that the letter dated September 01, 1989 was not intended to be a refusal even from the point of view of the respondent.

As noticed above, the appellants had sent a legal notice to the respondent on February 28, 1995 and as it evoked no response, they filed the suit on July 05, 1995 much before the expiry of the period of three years from the date of the notice. In this view of the matter, the finding of the trial Judge is not sustainable and accordingly, it is held that the suit was filed within the period of limitation.

Since there is no dispute between the parties with regard to the execution of the 'Agreement to Sell', I feel the appellants are entitled to the relief of specific performance. Hence, I pass a decree for specific performance of the 'Agreement to Sell' dated June 15, 1977 and direct the respondent to execute the sale deed in favour of the appellants within three months from today. I further direct that in the event of respondent not executing the sale deed as directed the Registrar General of this Court shall depute an officer of Court to carry out execution of the sale deed for and on behalf of the respondent before the concerned Sub-Registrar.

The appeal is allowed in terms of the above order.

**REKHA SHARMA, J.**

**SEPTEMBER 25, 2009**  
**G**