

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) No.1978/2008 & IA No.136/09**
% **Date of Decision: January 22, 2009**
Indian Institute of Finance Plaintiff
! Through: Mr. O.P.Khadaria, Advocate
Versus
\$ M/s.Shakti Towers Pvt. Ltd. & Ors. Defendants
^ Through: Mr.Dinesh Garg, Advocate for
defendants No.1 and 2
Mr.Manoj K. Singh, Advocate with
Mr.Vijay K. Singh, Advocate for
defendant No.4

CORAM:
HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

S.N.AGGARWAL, J (ORAL)

1. The plaintiff on 18.09.2008 has filed this suit seeking cancellation of conveyance deed dated 20.06.2005 in respect of property bearing No.4-CC-II, Ashok Vihar, Phase-II, Delhi executed by DDA in favour of defendant No.1 and also for a declaration that

the ejectment decree dated 16.09.2004 passed against the plaintiff in respect of the said property in Suit No.227(277)/2003 titled M/s. Shakti Towers Pvt. Ltd. Vs. Indian Institute of Finance is a nullity. The plaintiff has further prayed for directions to the defendants 1 to 3 to return the rent realized by them from the plaintiff and in this regard has prayed for decree of Rs.1,31,18,641/- with interest @ 18% p.a. against them.

2. In response to summons of the suit, two separate written statements have been filed in this case, one by defendants 1 and 2 and the second by defendant No.4. The defendant No.4 is DDA in the case. The said defendant in addition to filing its written statement has also filed an application under Order 7 Rule 11 CPC being IA No.136/2009 seeking dismissal of the present suit, inter alia, on following grounds:-

- (i) The suit is barred by limitation.
- (ii) The suit does not disclose any cause of action.
- (iii) The suit is also barred under Section 31 of the Specific Relief Act, 1963

3. I have heard the arguments advanced by the learned counsel for the parties on the application filed by defendant No.4

under Order 7 Rule 11 CPC and have also gone through the plaint, written statement and the documents filed along with the plaint.

4. Briefly stated, the facts of the case relevant for the dismissal of the instant application are that admittedly Smt.Devika Rani was the original allottee of the suit property. She sold the suit property to Shri Ashok Manchanda (defendant No.3) on 19.6.1987. The sale in favour of Shri Ashok Manchanda was on the basis of agreement to sell, power of attorney, receipt etc.

5. The plaintiff was inducted as a tenant in the suit premises for a period of five years by Shri Ashok Manchanda on 18.12.1995. The period of tenancy of the plaintiff was to expire on 31.12.2000. Shri Ashok Manchanda who inducted the plaintiff as a tenant in the suit property sold the said property to defendant No.1 M/s. Shakti Towers Pvt. Ltd. on 20.10.1999. The sale in favour of defendant No.1 M/s. Shakti Towers Pvt. Ltd. was also on the basis of agreement to sell, power of attorney and receipt etc. The defendant No.1 M/s. Shakti Towers Pvt. Ltd. terminated the tenancy of the plaintiff with effect from 31.1.2000 vide notice of termination dated 4.1.2000 served upon the plaintiff. Since the plaintiff did not vacate the suit premises despite service of notice of termination of tenancy, the defendant No.1 being the owner of the suit property

filed a suit for ejectment and recovery of damages against the plaintiff being Suit No.227/2003 (re-numbered after transfer to the District Courts from this Court). The said suit for ejectment was filed by defendant No.1 against the plaintiff on 19.4.2000. The Court of Ms. Sunita Gupta, the then Additional District Judge, Delhi decreed the ejectment suit in respect of the suit property filed by defendant No.1 against the plaintiff vide judgment and decree dated 16.09.2004. The plaintiff being aggrieved by the ejectment decree dated 16.9.2004 passed against it by the trial court filed an appeal before this Court being RFA No.1999/2005 which was dismissed vide judgment dated 10.10.2006 passed by the Division Bench of this Court. The right of defendant No.1 in respect of the suit premises on the basis of agreement to sell dated 30.20.1999 in its favour was upheld by the Division Bench of this Court in RFA No.1999/2005. The plaintiff still not being satisfied with the judgment dated 10.10.3006 passed by the Division Bench of this Court in its appeal, preferred a special leave petition being SLP No.1585/2007 before Hon'ble Supreme Court and the said Special Leave Petition was dismissed in limine vide order passed by the Hon'ble Supreme Court on 23.2.2007. Thereafter, the defendant No.1 being the decree holder in the ejectment decree filed an

execution petition against the plaintiff/judgment debtor for execution of the ejectment decree in respect of the suit premises in which warrants of possession were issued against the plaintiff by the Executing Court. The plaintiff aggrieved by issuance of warrants of possession by the Executing Court filed an appeal before this Court being EFA No.12/2007 in which the plaintiff gave an undertaking to this Court to vacate the suit premises and hand over its vacant possession to defendant No.1 by 30.04.2008. The plaintiff further undertook payment of damages of Rs.3 lacs per month with effect from 01.01.2008 till the date of handing over of possession on 30.4.2008. Since the plaintiff despite undertaking given by it to this Court on 25.10.2007 did not honour its commitment, the defendant No.1 filed a contempt petition against the plaintiff being Contempt Case (C) No.280/2008 on 13.5.2008. In the contempt case directions were given by this Court on 17.10.2008 to the SHO, P.S. Ashok Vihar to break upon the lock of suit premises and hand over its possession to defendant No.1. The plaintiff aggrieved by the said order filed a review petition seeking review of order dated 17.10.2008 but before the review petition filed by the plaintiff could be taken up for hearing, the possession of the suit premises was got delivered by the SHO, P.S. Ashok Vihar to

defendant No.1 and this rendered the review application of the plaintiff infructuous. In the meanwhile, the plaintiff has filed the present suit for cancellation of sale deed dated 20.06.2005 executed by DDA in favour of defendant No.1.

6. Mr.Vijay Singh, learned counsel appearing on behalf of DDA (defendant No.4) has contended that the present suit filed by the plaintiff is hopelessly barred by limitation having been filed beyond three years from the date of execution of conveyance deed by DDA in favour of defendant No.1 on 20.6.2005. The learned counsel appearing on behalf of defendant No.1 has relied upon the provisions contained in Article 59 of the 1st Schedule of the Limitation Act, 1963 to contend that the suit for cancellation of an instrument could have been filed by the plaintiff only within three years from the date when he first came to know about the execution of the said document. The contention of the learned counsel appearing on behalf of the DDA is that the plaint nowhere discloses the date on which the plaintiff came to know about the execution of the conveyance deed in respect of the suit property in favour of defendant No.1. It is further contended by him that the plaintiff had vigorously litigated against the ejectment decree passed against it up to the Hon'ble Supreme Court and was all

throughout aware of execution of the conveyance deed in favour of defendant No.1 and, therefore, the plaintiff could not have filed the present suit beyond three years from the date of execution of the conveyance deed in respect of suit premises in favour of defendant No.1.

7. To meet the argument of limitation urged on behalf of defendant No.1, Mr.O.P.Khadaria, learned counsel appearing on behalf of the plaintiff has referred to the pleadings of the plaintiff contained in paras 14, 15, 16, 19 and 20 of the plaint to show that the plaintiff came to know about the conveyance deed dated 20.06.2005 for the first time when the said document was filed in the criminal proceedings initiated by the plaintiff against the defendants including the DDA. According to Mr.Khadaria, the suit filed by the plaintiff is within limitation.

8. To appreciate the rival arguments advanced by the counsel for the parties on the point of limitation, I have gone through the entire plaint including the paragraphs of the said plaint referred above relied upon by the counsel for the plaintiff. On going through the same, I could not find even a line where the plaintiff might have said about the date of knowledge when he came to know about the execution of the conveyance deed dated

20.06.2005 in favour of defendant No.1. It may be noted that the plaintiff had been vigorously litigating to protect his tenancy in respect of the suit premises in ejectment proceedings initiated against the plaintiff which stood decided against the plaintiff right up to the Hon'ble Supreme Court. The plaintiff has taken all the points that were available to him to protect his tenancy in those ejectment proceedings right up to the Hon'ble Supreme Court but were met without any success. I am of the view that the present suit filed by the plaintiff for cancellation of sale deed dated 20.06.2005 in respect of the suit premises is barred by limitation in view of provisions contained in Article 59 of the 1st Schedule to the Limitation Act, 1963.

9. Assuming that the suit of the plaintiff is within limitation, the next question that stares at us is whether the plaintiff after he lost the battle for protecting his tenancy in respect of suit premises up to the Hon'ble Supreme Court, can he be allowed to file the present suit seeking cancellation of title documents in favour of successor-in-interest of Ashok Manchanda who inducted the plaintiff as a tenant in the suit property on 18.12.1995. The plaintiff has admittedly handed over vacant and peaceful possession of the suit premises to defendant No.1 being the successor-in-interest of Shri

Ashok Manchanda. Admittedly, the plaintiff is left with no right or interest in the suit premises after he handed over its possession to the true owner of the suit property being defendant No.1 herein. The right for cancellation of an instrument flows from the provisions contained in Section 31 of the Specific Relief Act, 1963 which reads as under:-

“31. When cancellation may be ordered-(1) Any person against whom a written statement is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.”

10. A perusal of the above statutory provisions would reveal that a person can ask for cancellation of an instrument including a document of title to protect his right in suit premises by such cancellation. For seeking cancellation of an instrument, it is not necessary that a party seeking cancellation must be a party to the instrument. Anybody who is affected by an instrument sought to be cancelled can come to the Court and seek its cancellation.

However, a person who has no right at all in respect of the suit premises cannot come and ask for cancellation of an instrument of title deed in favour of owner of the said property. It is shocking that the plaintiff even after he lost up to the Hon'ble Supreme Court in protecting his tenancy in respect of the suit premises on grounds that were available to him in law, has filed the present suit without any legal basis. To me it appears that the plaintiff has misused the legal machinery as the suit filed by him is without any cause of action.

11. Mr.Khadaria, learned counsel appearing on behalf of the plaintiff has relied upon a Division Bench Judgment of this Court in **Mr.Kuldip Gandotra Vs. UOI & Ors.** (W.P.(C) No.4458/1993 decided on 06.12.2006), where the Division Bench has taken note of a judgment of the Hon'ble Supreme Court in **Vijay Syal Vs. State of Punjab (2003) 9 SCC 401** to contend that the dismissal of SLP by the Hon'ble Supreme Court in limini does not preclude the plaintiff from filing the present suit seeking cancellation of conveyance deed dated 20.06.2005 executed by DDA in favour of defendant No.1. In my opinion, this judgment relied upon by the learned counsel for the plaintiff has no application to the peculiar facts and circumstances of this case.

12. Mr.Dinesh Garg, learned counsel appearing on behalf of defendants 1 and 2 has relied upon a judgment of Hon'ble Supreme Court in ***T.Arivandandam Vs. T. V. Satyapal & Anr. (1997) 4 Supreme Court Cases 467*** to contend that where the Court finds the case to be vexatious and meritless then action should be initiated under the Penal Code.

13. I have given my anxious consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties. I am of the considered view that the present suit filed by the plaintiff is wholly vexatious and is a gross misuse of the legal process. This suit is liable to be dismissed not only on the ground of limitation but for want of cause of action. The case warrants imposition of exemplary costs looking into the conduct of the plaintiff in continuing with vexatious litigation even after losing upto the Hon'ble Supreme Court. The plaintiff is a private commercial institute working under the name and style of Indian Institute of Finance. The application filed by defendant No.4 (DDA) under Order 7 Rule 11 CPC is allowed

14 The suit is liable to be dismissed not only against defendant No. 4 but against all the defendants. Accordingly the suit of the plaintiff filed against all the defendants is dismissed with

costs of Rs.1,00,000/-, 50% of which should be deposited with Delhi Legal Services Authority, 25% with Delhi High Court Lawyers Welfare Fund and the remaining 25% is awarded to the defendants.

January 22, 2009
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S.N.AGGARWAL
[JUDGE]