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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: February 03, 2010

Date of Order: March 22, 2010

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22.03.2010

Piyush Colonisers Pvt. Ltd. & Anr.

...Petitioners

Through: Mr. Anil Kher, Sr. Adv. with Mr. Shashi Shekhar, Advocates

Versus

Swami Nath Shanker

...Respondent

Through: nemo

JUSTICE SHIV NARAYAN DHINGRA

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.

JUDGMENT

1. By way of present petition under Article 227 of the Constitution of India, the petitioner has assailed an order dated 30th November 2009 passed by learned ADJ whereby an application of the petitioner seeking leave to defend was dismissed.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner floated a project of developing a colony and invited persons to show their interest in booking plots in the colony to be developed. The application forms for this purpose were issued to different persons including respondent Swami Nath Shanker, an NRI. The registration form supplied by the petitioner to respondent for registration of plots read as under:

“(a) That your offer of Provisional allotment of a residential plot in your Palwan – Faridabad

Township shall be made to me/ us with in approx. 6 (six) months from the date of registration with you.

(b) That the said advance made by me/ us would be adjusted against the Provisional allotment payable by me/us, if and when your offer of Provisional allotment for a plot is made to me/us.

(c) That the plot will be allotted to me/ us at basic discounted rate and the location of the plot shall be decided by way of "draw of lots". However, the same is within the discretionary power of the company, and I/we shall not raise any objection with regard to manner adopted/followed by the company. The preferential location charges (PLC), statutory levies/charges and other charges over and above the said discounted rate shall be borne and paid by me/us."

3. Respondent booked two plots and paid an amount of Rs. 6 lac by cheque to the petitioner by filling the registration forms. When respondent did not hear from the petitioner about allotment for a considerable time, what to talk of six months as given in the registration form, respondent made representations to the petitioner and ultimately told petitioner to refund the money along with 11% interest, as provided in the registration form in paragraphs (e) and (f). The booking of the plot was done by respondent on 20th April, 2006. The respondent wrote letter to the petitioner on 5th March, 2008 i.e. after about two years and then gave reminders on 17th March, 2008 and 25th April, 2008 and it is only thereafter when the petitioner did not pay the amount, he filed the suit for recovery of the amount.

4. The learned ADJ after noting that the payment of Rs.6 lac was not

denied and there was written contract showing that the interest payable on refund would be 11% and finding that the defence raised by the petitioner was no defence in the eyes of law, dismissed the application for leave to defend and decreed the suit.

5. The contention of the petitioner before this Court is that the suit was not covered under Order 37. He submitted that the suit filed by the respondent was based on the cheques issued by respondent in the name of the petitioner. It was not based on the cheques issued by the petitioner to the respondent, therefore, the suit was not covered under Order 37 CPC. The other plea taken is that there was no clause for refund of the amount and if the petitioner started refunding the amount to plot holders in this manner, the whole project of the petitioner would come to standstill. It is submitted by counsel for the petitioner that the petitioner was liable to refund the amount only if the petitioner abandoned the project since it was not the case of the respondent that the petitioner has abandoned the project, the petitioner was not liable to refund the amount.

6. The contention of the petitioner that the suit was not maintainable under Order 37 CPC must fail. A suit under Order 37 CPC can be based on a written contract. The respondent had relied upon the written documents executed between the parties. The contract is in the nature of registration form where the receipt of the amount is admitted by the petitioner. The rate of interest is mentioned as 11% per annum. It is also mentioned that the amount was being received for future provisional allotment and it is also mentioned that the allotment of plot was likely to be done within six months' period. In view of this written contract and in view of admissions of the

petitioner that the amount paid by respondent was duly received, the suit was squarely covered under Order 37 CPC as it was a suit based on a written contract entered into between the parties. Since the registration form supplied by the petitioner was filled by respondent and accepted by the petitioner and money was taken, on acceptance on the part of the petitioner a written contract between the parties got concluded.

7. The other plea taken by the petitioner that the money was to be refunded only on cancellation of the project also does not find support from the contract. In the contract, it was specifically assured that the plot was likely to be allotted within six months. The project did not involve construction of flats. It only involved acquiring of land for the purpose of developing a plotted colony, preparation of the proper development plan with area earmarked for the plots and then allotting plots to the persons who got registered with the petitioner and simultaneously receiving the balance amount from the allottees and developing the internal infrastructure of the colony. If the petitioner had not even prepared a plan of colony on paper it is as good as abandoning the project. Respondent was lured to deposit money telling that he would be allotted plots within six months. The petitioner cannot keep the money with him for years together and say that he has not abandoned the project; therefore, he is not liable to refund the money. I consider that the plea raised by the petitioner is a baseless plea. The learned trial court rightly dismissed the application for leave to defendant preferred by the petitioner. I find no merits in this petition. The petition is hereby dismissed with no orders as to costs.

March 22, 2010
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SHIV NARAYAN DHINGRA J.