

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

+ **FAO (OS) No.150/2010 & C.M. No.4078/2010**

% **Judgment reserved on: 18.03.2010**
Judgment delivered on: 09.04.2010

M/S. SPLENDOR LANDBASE LIMITED Appellant
Through: Mr. Arvind K. Nigam, Sr. Advocate
with Mr. Cachin Puri, Ms. Namitha
Mathews and Mr. Rohit Singh,
Advocates

Versus

M/S. MIRAGE INFRA LIMITED & ANR. Respondents
Through: Mr. Manoj Kumar and Mr. Vishal
Gera, Advocates for Respondent
No.1.

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE MANMOHAN SINGH

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

MANMOHAN SINGH, J.

1. The Appellant has preferred the present Appeal against the order dated 8th February, 2010 passed by the learned Single Judge. While disposing of the two applications being IA No.4085/2009 by the Plaintiff/Appellant herein seeking temporary injunction and IA No.4614/2009 by the Defendant/Respondent herein seeking rejection of the plaint, the learned Single Judge has returned the plaint under Order VII Rule 11 of the Code of Civil Procedure to be filed before the District Judge at Chandigarh for want of territorial jurisdiction of this Court.

2. Brief facts are that the parties had entered into an agreement/term sheet dated 24.9.2008 for development of land admeasuring 19,233 sq. yards (approximately 3.97 acres) situated at Plot No.68, Industrial Area, Phase-I, Chandigarh (U.T.), which was executed at New Delhi and in lieu of which part payments were also made by the Appellant to the respondent No.1 at Delhi.

3. Admittedly, the Respondent is a Chandigarh based company and the suit property is also situated in Chandigarh. The main conditions of the term sheet read as under:

“1. The second party shall bear the cost of CLU charges along with requisite fees and charges to the Competent Authority(ies) and construction cost of the building for developing the Proposed Project.

2. That the parties agree to share the Net Revenue from sale of saleable built up area of the proposed project as under:

First party: 48% and Second Party: 52%

3. That the Second party shall recover from the First Party's later's share of revenue a sum of Rs.10,00,00,000/- (Rupees Ten Crores only) towards cost of brokerage and expenses incurred towards marketing, branding, publicity, promotional events, brochure, advertisements in newspapers, hoardings, etc. of the proposed project.

4. That the Second party will facilitate the sale of saleable proposed built up area and from the First Party's share of Sale proceeds the First Party shall first repay towards Rs.35 Crore (Rupees Thirty Five Crore) loan taken by the First party from Canara Bank for purchase of the Said Land. The Second party may contribute from its share of revenue of sales as may be required to achieve the repayment of half of loan by 15th January, 2009 and balance by 31st March, 2009. It will be sole responsibility of the second party whatsoever.

5. That the Second party has paid to the First Party a Non refundable security deposit of

Rs.2,51,00,000/- (Rupees Two Crores Fifty one lacs only) vide cheque No.000675 dated 24th October, 2008 drawn on HDFC Bank Limited, Jasola, New Delhi on signing of this Term Sheet, the receipt of which the First party hereby confirms and acknowledges.

6. That the Second Party has also paid a sum of Rs.5,71,47,013/- (Rupees Five Crores, Seventy One lacs Forty Seven Thousand Thirteen only) vide cheque No.000674 dated 24th October, 2008 drawn on HDFC Bank Limited, Jasola, New Delhi to the First party towards reimbursement of CLU charges which has been deposited by the First party with the designated authority and PDC for the balance CLU cheques will be given.

7. That the Second Party shall be entitled to raise/swap the loan from banks/financial institution by mortgaging or charging the proposed Project”.

4. Under the above mentioned term sheet, the Appellant had paid a non-refundable security deposit of Rs.2,51,00,000/- to the Respondent No.1 and further paid an amount of Rs.5,71,47,013/- towards reimbursement of CLU charges which were deposited by the Respondent No.1 with the designated authority at New Delhi.

5. The case of the Appellant before the trial court was that after execution of the term sheet the Respondent No.1 started negotiating sale of the suit property with a third party and during the course of negotiations, Respondent No.2 acting on behalf of Respondent No.1 happened to approach one Mr. Anupam Naglia of the Vatika Group who also happened to be a Director with the Appellant company. The said fact came to the knowledge of the Appellant on or about 24th March, 2009. Thus, the Appellant filed a suit for declaration and injunction with the following prayer:

“i) grant a decree of declaration in favour of the Plaintiffs and against the Defendants to the effect that the Term sheet dated 24.09.2008 is binding on the Defendants;
ii) grant decree of perpetual injunction in favour of Plaintiffs and against the Defendants, their employees, agents, attorneys and all those claiming through them in respect of the Suit Lands being Plot No.168, Industrial Area, Phase-I, Chandigarh, UT measuring approximately 19,233 sq yds (approximately 3.97 acres) restraining them from creating any third party rights and/or dealing with the aforementioned suit property in any manner whatsoever;
iii) pass any other relief(s) as this Hon’ble Court may deem fit and proper in the interest of justice.”

6. The said suit along with interim application being IA No.4085/2009 was listed before the Court on 26th March, 2009. While issuing summons, the Court passed an order restraining the Respondent No.1 from creating any third party interest in respect of the suit property. Thereafter, upon service the Respondent filed the application under Order VII Rule 11 CPC being IA No.4614/2009 for rejection of the plaint for want of territorial jurisdiction.

7. After hearing both the applications, the learned Single Judge passed the impugned order thereby returning the plaint under Order VII Rule 11 CPC to be presented before the appropriate court and also dismissed the injunction application. The main reasons for return of the plaint are given in paragraph 14 of the impugned order which reads as under:

“14. The plaintiff’s contention here is twofold; the sum and substance of the term sheet is a development agreement which does not create

any right and interest in the property and that it was executed in Delhi. For supporting the claim for this Court's jurisdiction, reliance is placed in ABC Laminart case (supra). While the contention is a normal situation is unexceptionable that such Court's jurisdiction can be suitably invoked where the cause of action or a part of cause of action arose, nevertheless, one has to be conscious about the fact that the Section-20 is a residual provision which applies if the other provisions are not attracted. The nature of the relief claimed is a declaration that the term sheet subsists. However, that is not the end of the matter. The context and the subject matter of the term sheet are the rights and obligations of the parties in relation to the immovable property which is located at Chandigarh. Most importantly, a permanent injunction is sought by the plaintiffs to restrain the defendants from dealing with or creating third party rights in respect of such suit property (located at Chandigarh). This relief clearly pertains to and is expressly in respect of immovable property. The defendant does not reside or have any office in Delhi so as to fall within Explanation to Section-16. In these circumstances, this Court is of the opinion that the argument about the term sheet having been executed in Delhi being sufficient to cloth the Court with territorial jurisdiction, is insubstantial."

8. Against the said order the present Appeal has been filed by the Appellant mainly on the ground that the provision of Section 16 of Code of Civil Procedure is not applicable in the present case as the present case is as regards a development agreement and the governing provision applicable is Section 20 and proviso of Section 16 of the CPC and not Section 16 (d) of the CPC for determining the question of territorial jurisdiction as admittedly the term sheet was executed at New Delhi and payments under the term sheet were also

made in New Delhi, thus under Section 20(c) of the CPC a part of the cause of action has arisen within the territory of this Court, therefore, order passed by the Single Judge is not sustainable and is also contrary to the settled law laid down in the case of ***Jitender Nath vs. Chopra Land Developeres Pvt. Ltd. & Ors.***, (2007) 11 SCC 453 wherein it was held that in case of a development agreement where a party agreed to develop the property for certain consideration, the governing provision is Section 20 of CPC.

9. It is also argued by the learned Senior Counsel for the Appellant that the learned Single Judge has not followed the judgment rendered by the Supreme Court of India in the case of ***Jitender Nath (supra)*** and not properly considered the decision of ***Harshad Chaman Lal Modi vs. D.L.F. Universal Ltd. and another*** reported in AIR 2005 SC 4446 where a court does not have jurisdiction over the subject matter of a suit by reason of any limitation imposed by the statute. Further it is argued that since the term sheet was executed by the parties at New Delhi, on a joint reading of an explanation to Section 16 and 20 of the CPC, this Court has the jurisdiction to try the suit. In support of his submission he has also referred the decision reported in ***ABC Laminart Pvt. Ltd. and Another vs. A.P. Agencies, Salem***, (1989) 2 SCC 163 wherein it was held that same rule may be applied in cases arising out of arbitration agreements as far as jurisdiction is concerned.

10. Lastly it is argued by the learned Senior Counsel for the Appellant that while deciding the application under Order VII Rule 11

CPC, the learned Single Judge has also dismissed the application under Order XXXIX Rules 1 & 2 CPC without having decided the application on merit of the case and the learned court below has returned the plaint but not extended the interim order.

11. The learned counsel for the respondent has argued on mainly the issue of jurisdiction apart from other issues. It is argued that since the property in question is situated outside the jurisdiction of the court as the respondent No.1 is carrying on its business at Chandigarh, hence this Court has no territorial jurisdiction to entertain and try the matter. His submission is simple and straightforward that no doubt the dispute regarding development of the property and the rights, claims and interest of the parties are dependant upon the development and construction therein in respect of immovable property and as clause-16(d) of CPC which provides that for the determination of any right or interest in an immovable property, the suit has to be instituted in the court within the local limits of whose jurisdiction the immovable property is situated.

12. In support of his submissions, he has referred the case of **Harshad Chaman Lal Modi (supra)** and **Pantaloon Retail India Ltd. vs. DLF Limited and Ors.** reported in 155(2008) DLT 642 (DB).

13. Sections 15 to 20 of the CPC contain provisions relating to the jurisdiction of courts and the said provisions regulate the fora for institution of various kinds of suits. Section 20 of the CPC is a residual section and covers all those cases not dealt with or covered by Sections 15 to 19. In order to appreciate the point involved in the

matter Section 16 of CPC is reproduced as under:

“16. Suites to be instituted where subject-matter situated, subject to the pecuniary or other limitations prescribed: suits,
(a) for the recovery of immovable property with or without rent or profits,
(b) for the partition of immovable property,
(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
(d) for the determination of any other right to or interest in immovable property,
(e) for compensation of wrong to immovable property,
(f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situated.

14. Proviso to Section 16 declares that where the reliefs sought can be obtained through the personal obedience of the Defendant, the suit can be instituted either in the Court within whose jurisdiction the property is situated or in the Court where the Defendant actually or voluntarily resides, or carries on business or personally works for gain. No doubt, if the proviso is applicable in a matter, the principles stipulated in Section 20 of the CPC would be determining the territorial jurisdiction. In any case, the Court within the local limits of whose jurisdiction the property is situate shall always have the jurisdiction even when the case is covered by the proviso and in view of the choice of forum, the Plaintiff can be compelled to approach that court as per the agreement even if those courts have jurisdiction. If the contention of the Respondent is accepted and it is held that the case is covered by Section 16 (d) of the Code and the proviso of Section 16 has no application, nor Section 20 would apply as a residual clause, then Delhi

Courts have no jurisdiction in the matter.

15. For the purpose of convenience, Section 20 of the CPC reads as under:

“20. Other suits to be instituted where defendants reside or cause of action arises.— Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

16. Therefore, the question before this Court is as to whether the present case is covered under Section 16 (d) of the CPC or whether the proviso of Section 16 is applicable and therefore, provision of Section 20 of the CPC can be invoked for the purpose of deciding the question of territorial jurisdiction.

17. It is a undisputed fact that the Respondents are carrying on business at Chandigarh and that the property in question is also situated outside the jurisdiction of this Court. The Appellant has sought the main prayer of declaration against the Respondents to the effect that the term sheet dated 24th September, 2008 be declared

binding upon the Respondents. Admittedly, in case the said terms and conditions of the term sheet are enforced between the parties or a decree thereof is passed in faovur of the Appellant, the possession of the property in question has to be handed over to the Appellant for the purpose of development, although, it is true that relief for possession was not specifically made in the Plaint.

18. In the case of **Harshad Chaman Lal Modi (supra)** the property was situated outside the jurisdiction of Delhi Courts. A suit for specific performance was filed in this Court. The defendants had their head office at Delhi and an agreement was also entered into between the parties at Delhi. Payments in some installments were also to be made at Delhi. The plea in that case was raised by the defendants in the application moved under Order VII Rule 10 CPC that this Court will have no territorial jurisdiction to entertain the suit in view of Section 16 of the CPC. The plaintiff, on the other hand, referred to the provisions of Section 20 of the CPC and contended that since the defendants had their office in Delhi, the agreement was entered into in Delhi and the partial payments were also made in Delhi, thus the cause of action having arisen in Delhi, this Court had the requisite jurisdiction to entertain the suit. The Apex Court held that as the property was situated in Gurgaon, Haryana, i.e. outside the territorial jurisdiction of Delhi, Delhi Courts would have no jurisdiction to entertain the suit and confirmed the order of the trial court. Paragraph 14 of the judgment reads as under:

“14. Section 16 thus recognizes a well

established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. Proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on well known maxim "equity acts in personam, recognized by Chancery Courts in England, Equity Courts had jurisdiction to entertain suits respecting immovable properties abroad through personal obedience of the defendant. The principle on which the maxim was based was that courts could grant reliefs in suits respecting immovable property situate abroad by enforcing their judgments by process in personam, i.e. by arrest of defendant or by attachment of his property."

19. The prayer made in the plaint in the case of **Harshad Chaman Lal Modi (supra)** is similar to the prayer made in the present case. For the sake of convenience, the prayer made in the **Harshad Chaman Lal Modi (supra)** is reproduced as under:

"Therefore, it is most respectfully prayed that in the facts and circumstances stated above, this Hon'ble Court may graciously be pleased to:-

- a) pass a decree of declaration to the effect that there is a valid and existing contract with regard to plot no.L-31/4, DLF Qutab Enclave Complex, Gurgaon, Haryana, between the plaintiff and the defendant no.1;
- b) pass a decree to the effect that the Defendant no.1 is bound to abide by the contract, i.e. plot buyer agreement dated 14.8.85 and the unilateral rescinding/canceling/ withdrawing of the contract by the Defendant no.1 is bad and

illegal.”

20. Strong reliance has been placed by the learned counsel for the Appellant on the case of ***Jitender Nath (supra)***. In the said case, the plot of land in question was situated at Delhi, whereas the agreement was executed between the parties at Faridabad, Haryana. The appeal was brought before the Supreme Court against the judgment of the High Court of Punjab & Haryana, which upset the judgment passed by the Additional Civil Judge, Faridabad by which an application filed by the developers, respondent in the Supreme Court, under Section 14 of the Arbitration Act, 1940 for seeking enforcement of an award rendered by the Arbitrator, was dismissed for want of jurisdiction. The facts of the case revealed that the Appellant remained the owner of the land, while the respondent was only the developer/builder. Under the agreement, the developer agreed to construct the complex for which the owner gave permission to the builder. The entire cost of construction was to be borne by the developer while the building plans and other statutory documents were to be signed by the Appellant/owner. In consideration of the developer's services, the Appellant/owner had agreed to allow ownership of certain floors of the complex with interest, to be transferred in the name of the developer.

21. The learned Single Judge in the impugned order has distinguished the case of ***Jitender Nath (supra)*** in paragraph 15 of his order which reads as under:

15. So far as reliance placed on Jitender Nath

case is concerned, although there are some elements in that decision which might favour the position taken that this Court has jurisdiction, to entertain the suit, significantly, the Supreme Court rested its reasons largely on the fact that the agreement itself stated that arbitration was to be conducted in Faridabad, an award was made pursuant to such clause and consequently the Faridabad Court was approached. These distinctive features single out the ruling in *Jitender Nath* which cannot be considered as a view overruling the judgment in *Harshad Chiman Lal Modi*.

22. There are other admitted facts in the said matter that the parties in the case of ***Jitender Nath (supra)*** had entered into the contract wherein they agreed to refer all the disputes to an arbitration at Faridabad and they had agreed that the Faridabad court alone shall have the jurisdiction. The issue before the Supreme Court was whether the civil court at Faridabad had jurisdiction to entertain a petition under Section 14 of the Arbitration Act, 1940 or not. Therefore, the said case was decided as per its own merit. In the present case the situation is entirely different.

23. In the present case, both the parties are relying upon the term sheet/agreement dated 24th September, 2009 which does not have any clause of arbitration has exclusive jurisdiction been invoked by the parties. The Appellant wants a declaration from this court to the effect that the same be entered between the parties as per term sheet in both the decisions referred by the learned Senior counsel for the Appellant i.e. *Jatinder Nath's case (supra)* and **Suresh Jain Vs. Dinesh Kumar** reported in **AIR 2008 Delhi 127**. The parties had

entered into an agreement within the exclusive jurisdiction of the courts of their own free will and volition in case of any dispute arising in respect of the subject matter of the agreement or in connection to it. Thus the name of the arbitrator was fixed by the parties themselves with mutual consent but the facts in the present case are dissimilar. Hence we are in agreement with the view taken by the learned Single Judge in this matter. Although, we are in agreement with the principle laid down by the Apex Court in the case of ABC Laminart Pvt. Ltd. (supra) to the effect that as far as jurisdiction is concerned, the same rule may be applied in case cause of action arising out of the arbitration.

24. Another case referred by the learned counsel for the Respondent i.e. ***Pantaloon Retail India Ltd. (supra)*** where the disputed property was located in Gurgaon and the suit sought mandatory injunction in Delhi court, the Division Bench of this Court affirmed the order of the learned Single Judge who had followed the judgment of ***Vipul Infrastructure Developers Ltd. and Anr. v. Rohit Kochhar and Anr.***, FAO (OS) 196-197/2005 decided on 11.3.2008. The relevant paras of the Division Bench are 17 & 18 which read as under:

“17. The interpretation that is sought to be given by the respondents herein, if accepted, would in view of the aforesaid decision, lead to an incongruous situation, as a person who is located in Delhi and buys a property in Gurgaon or in Mumbai, would seek for declaration at Delhi and at the execution stage, get the decree transferred to Gurgaon or Mumbai for its execution.

18. In the present case, it is an admitted position that the appellant had entered into the aforesaid alleged contract at its Corporate Office at Delhi. It is the specific stand of the appellant that they were initially residents of Delhi and that they had moved to Gurgaon and their corporate office is now also located at Gurgaon. It is the contention of the counsel appearing for the respondents that the proviso to section 16 of Code of Civil Procedure is applicable which is sought to be involved, for, the relief which is sought for could be entirely enforced through the personal obedience of the defendants in Delhi. There is however not only a prayer in the plaint for declaration of the right and title, but also to transfer the right, title and interest in the suit premises situate at Gurgaon. As, in our opinion, the suit can be decreed in favour of the plaintiff only when the court can get the sale deed executed and registered in favour of the plaintiff which would confer the title of the suit premises on the plaintiff, and the execution and the registration of the sale document would have to take place at Gurgaon and, for this the court will also have to pass a decree directing the defendant to get the sale deed executed and registered at Gurgaon, implication of the same will be that a direction will have to be given to the defendant that he shall have to move out of Delhi and go to Gurgaon and get the same registered. No sale deed is sought to be registered at Delhi and, therefore, in our considered opinion such a relief cannot be entirely obtained through, the personal obedience of the defendant who in this case has to go to be jurisdiction of another court to get the decree executed and the sale deed registered....”

25. Having considered the decisions referred by the parties and on a plain reading of the plaint as a whole, it is clear as we have indicated above that the present suit is one which comes within the purview of Section 16(d) of the CPC and the proviso of Section 16 of CPC is not applicable under the circumstances as the proviso of Section

16 of CPC is an exception to the main part of the Section which cannot be construed to enlarge the scope of the main provision. If the suit comes within Section 16(d) of the CPC, it has been held by the Apex Court in Harshad Chiman Lal Modi's case (supra) that Section 20 of the Code would have no application in view of the opening words of Section 20 "subject to limitations aforesaid". The Apex Court has held that the proviso to Section 16 would apply only if the relief sought could entirely be obtained by personal obedience of the defendant. The proviso we feel will only apply if the suit falls within one of the categories specified in the main part of the Section. In the present case, although specifically the relief for possession of the property has not been claimed by the Appellant in the prayer for the purpose of development, however, it is settled law that by clever drafting a party cannot be permitted to come within different meaning of relief claimed. Hence, no benefit can be derived by the Appellant either from the proviso of Section 16 or Section 20 of the Code of Civil Procedure.

26. We are, therefore, not inclined to interfere with the order of the learned Single Judge. However, as appears from the order passed by the learned Single Judge, the application under Order XXXIX Rules 1 & 2 CPC on merit has not been decided and the application was dismissed along with the application under Order VII Rule 11 CPC, accepting the submission of the learned counsel for the Appellant, we agree that the said application has to be considered on merit before transferee court.

27. For the aforesaid reasons the present appeal is disposed of with the direction that one more opportunity is granted to the Appellant to present the present plaint before the appropriate court in terms of the order passed by the learned Single Judge. However, keeping in mind the facts and circumstances of the present case, we extend the interim order passed by this Court on 26th March, 2009 for further period of four weeks from the date of passing the order.

28. We clarify that the transferee court shall decide the interim application under Order XXXIX Rules 1 & 2 CPC afresh, without being influenced by the interim order passed by us in the matter.

29. No costs.

MANMOHAN SINGH, J.

VIKRAMAJIT SEN, J.

April 09, 2010
jk/dp