

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: October 18, 2011
Judgment Pronounced on: October 21, 2011

+ CS(OS) 1571/1998

M/S. SENTINEL CONSULTANTS PVT. LTD. Plaintiff
Through: Mr. Suresh Singh, Adv.
versus

SHRI SUDHIR MALHOTRA Defendant
Through: Mr. Vikas Sharma, Adv. for
the contemnor.

CORAM:-
HON'BLE MR JUSTICE V.K. JAIN

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| 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 the judgment should be reported in Digest? | Yes |

V.K. JAIN, J

1. This is a suit for specific performance of the Agreement to Sell dated 27th March, 1997, recovery of Rs.25 lac as damages and for mandatory and perpetual injunction. The plaintiff Company was a tenant under defendant No.1 in respect of the ground floor of property No.A-249, Defence Colony, New Delhi. Defendant No.1 entered into a collaboration agreement with defendant No.2

whereunder the existing structure on property No. A-249, Defence Colony, New Delhi, was to be demolished and replaced by a new building having basement, ground floor, first floor and second floor. Under the collaboration agreement, basement, ground floor and terrace floor were to be given to defendant No.1 whereas the first floor and second floor were to go to defendant No.2. A tripartite agreement dated 27.03.1997 was entered into between the plaintiff and defendants whereby defendant No.1 agreed to sell all his rights, title and interest including property rights in the basement to be constructed by defendant No.2 on the aforesaid property of the plaintiff-company. It was also agreed that the basement would be for the maximum permissible covered area and will comprise a hall toilet and a pantry. The defendants also agreed to give right of user of common toilet to be constructed on the second floor, to the plaintiff, in addition to the right to install TV antenna, wireless and communication antenna on the roofs and free ingress and egress to use common passages, staircase and lift etc. The total consideration for the sale of the basement floor was fixed at Rs.12,25,000/- out of which a sum of Rs.25,000/- was paid by the plaintiff to defendant No.1 at

the time of the execution of the agreement. Out of the balance sale consideration of Rs.12 lac, Rs.2 lac were payable to defendant No.1 on completion of the basement as per terms of the agreement or on the plaintiff company coming into possession after expiry of eight months (which was the period fixed for construction of the basement), whichever be earlier. A sum of Rs.10 lac, agreed to be paid to the plaintiff for relinquishment of subsisting tenancy rights in the ground floor and that amount was to be adjusted against balance sale consideration for the basement, at the time of giving its possession to the plaintiff company. The plaintiff company vacated the ground floor of the property in terms of the agreement between the parties. The defendants, however, failed to complete the basement within eight months from the date the possession of the ground floor was handed over by the plaintiff. It is alleged that in first week of May, 1998, an official of the plaintiff company visited the suit property which was under construction at that time and found that a highly truncated and abridged basement had been constructed. The plaintiff has now sought a decree for specific performance of the Agreement to Sell dated 27th March, 1997 by directing the

defendants to sell the basement floor of the suit property to it, along with a decree for possession of the basement floor. The plaintiff has also sought recovery of Rs.25 lac from defendant No.1, being the liquidated damages for not handing over possession of the property agreed to be sold within the stipulated period of eight months. The plaintiff has also sought an injunction directing the defendants to construct basement to the extent maximum permissible covered area and complete the interior finish.

2. The defendants filed written statement contesting the suit. They denied authority of Shri Kuldeep Singh to file the present suit on behalf of plaintiff and also claimed that the agreement between the parties is illegal and enforceable in law. It was also alleged that after completion of the building, necessary 'C' and 'D' form was obtained by the builder on 7th November, 1997 and the plaintiff was notified to take possession of the basement. The plaintiff, however, failed to come forward to take possession of the basement and, therefore, committed breach of the agreement between the parties. The defendants also took the plea that the suit as framed is not maintainable and the agreement dated 27th March, 1997 has expired by efflux of time on 27th November,

1997. On merits, the defendants have admitted execution of the tripartite agreement to sell dated 27th March, 1997. They have also admitted that the plaintiff was a tenant under defendant No. 1 in respect of the ground floor of property No. A-249, Defence Colony, New Delhi. It is also alleged that maximum permissible area for construction of basement about 251 square feet and basement was constructed accordingly.

3. On the pleadings of the parties, following issue were framed:-

1. Whether the suit as framed is not maintainable. OPD.
2. Whether suit is bad for mis-joinder of parties? OPD.
3. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD.
4. Whether the suit has been filed by duly authorized person on behalf of the plaintiff? OPP.
5. Whether Agreement to Sell dated 27th March, 1997 is not legally enforceable and has come to an end by efflux of time on 27th November, 1997? OPD.
6. Whether the plaintiff was and has been ready and willing to perform its part of contract? OPP.

7. Whether defendants were and have been ready and willing to perform their part of contract? OPD.

8. Whether the plaintiff is entitled to the decree of specific performance and possession as prayed in the suit? OPP.

9. Whether the plaintiff is entitled to decree for recovery of Rs.25 lac quantified as liquidated damages under Agreement to Sell dated 27th March, 1997 along with interest @ 18% per annum from the date of the suit till payment? OPP.

10. Relief.

4. Vide interim order dated 3rd August, 1998, this Court directed the parties to maintain status quo in respect of the ground floor and first floor of the property No. A-249, Defence Colony, New Delhi. This order was modified on November 10, 1998 by directing that the parties shall maintain status quo with respect to basement only. On that date, the defendants had submitted before this Court that the basement was complete and even a completion certificate had been obtained in this regard and the defendants were ready to hand over the vacant possession over the basement to the plaintiff.

5. IA 5530/2004 was filed by the plaintiff on July 12, 2004 seeking action under Order 39 Rule 2A of CPC on the

ground that despite orders of this Court dated 3rd August, 1997 and 10th November, 1998, defendant No.1 delivered the possession of the basement of the suit property to M/s.ESSEMM Realtors. Notice of the application was also issued to M/s.ESSEMM Realtors through Mr. Sanjay Sharma and Mr. Manoj Kain.

6. Reply to the application was filed only by M/s.ESSEMM Realtors. It has been claimed in the reply that M/s.ESSEMM Realtors was not aware of the Agreement to Sell dated 27th March, 1997 executed between the parties to the suit. It is further alleged in the reply that M/s.ESSEMM Realtors had taken a portion of the basement measuring 340 square feet, on rent, from defendant No.1 – Sudhir Malhotra vide lease deed dated 14th March, 1997 for the period of three years. Vide sale deed dated 28th January, 2003, the tenancy premises was sold by defendant No.1 to Mr. Manoj Kain and Sanjay Sharma who was running this business under the name and style of ESSEMM REALTERS.

Issue No.1

7. The written statement does not indicate why and how the suit as framed is not maintainable. Admittedly, an

Agreement to Sell the basement to be constructed on property No. A-249, Defence Colony, New Delhi, was executed between the parties on 27th March, 1997. The plaintiff is seeking specific performance of that agreement in addition to damages which it claims to be payable to it on account of failure of the defendants to construct basement in terms of the agreement between the parties and deliver its possession to the plaintiff. Since the case of the plaintiff is that basement to the maximum permissible extent was not constructed in terms of the agreement between the parties, when this suit was filed. The suit for mandatory injunction directing the defendants to construct basement to the maximum permissible extent is also maintainable. The issue, therefore, is decided against the defendants and in favour of the plaintiff.

Issue No.2

8. Admittedly both the defendants are party to the agreement dated 27th March, 1997. Hence, neither of them is an unnecessary party to the suit. The issue is decided against the defendants and in favour of the plaintiff.

Issue No.3

9. The plaintiff has valued for the purpose of court fee

and jurisdiction at Rs.37,25,500/-. For the purpose of relief of specific performance, the suit is valued at Rs.12,25,000/- which was the sale consideration agreed between the parties and for the purpose of recovery of damages, the plaintiff has valued the suit at Rs.25 lac which is the quantum of damages claimed by it. For the purpose of injunctions, the plaintiff has valued the suit at Rs.200/- each. The suit, therefore, is properly valued for the purpose of court fee. The suit is decided against the defendants and in favour of the plaintiff.

Issue No. 4

10. Ex.PW-1/2 is the copy of the resolution passed by the Board of Directors of the plaintiff company on 10th October, 1993, authorizing its Managing Director Shri Kuldeep Singh to institute any civil suit on the part of the company and to sign and verify the pleadings. There is no evidence in rebuttal. I, therefore, hold that Shri Kuldeep Singh was competent to institute the suit and sign and verify the pleadings on behalf of the plaintiff company. The issue is decided against the defendants and in favour of the plaintiff.

Issues No.5 to 10

11. These issues are inter-connected and can be conveniently decided together.

It is an admitted case of the parties to the suit that the plaintiff company was a tenant under defendant No.1 in respect of the ground floor of property No. A-249, Defence Colony, New Delhi. Execution of tripartite agreement dated 27th March, 1997 is also an admitted fact.

Ex.PW-1/10 is the agreement to sell between the parties to the suit, namely, the plaintiff M/s Sentinel Consultants, defendant No. 1 Mr Sudhir Malhotra and defendant No. 2 Buildmore India Ltd. The relevant portions of the agreement read as under:-

“AND FURTHER WHEREAS the Vendor, vendee and the Confirming Party have agreed that, the Vendee shall vacate possession of ground floor premises and deliver the same to Confirming Party and also that, on terms and conditions agreed and stipulated hereinafter, the Vendor shall sell all rights, title and interest, including all possessory rights in the basement to be constructed by the Confirming Party to the Vendee and the Confirming Party hereby accepts and confirms the said arrangement and has no objection whatsoever thereto.

AND WHEREAS the Vendor, Vendee and Confirming Party have further agreed

that, the complete basement to be constructed by Confirming Party in accordance with maximum permissible covered area and to be sold by the Vendor to the Vendee shall inter-alia comprise of an hall, having one toilet & a pantry together with rights to use the common toilet constructed on the second floor, and rights to install and erect TC antennas, wireless and communication antenna(s) on the roof, with all rights of free ingress and egress to and from the demised premises, right to use common passages, stair cases, lift etc., subject to Clause-20 with proportionate undivided impartible share in the land contained in plot No.A-249, Defence Colony, New Delhi, hereinafter referred to as the **“demised premises”**.

That in pursuance of the said Agreement and in consideration of a sum of Rs.12,25,000/- (Rupees twelve lac twenty-five thousand only), being paid by Vendee to the Vendor, the Vendor doth hereby agree to sell, convey, transfer and assign all his rights, title, interest and possession in the demised premises alongwith all rights in the fixtures, fittings etc.etc. unto the Vendee, absolutely and forever together with undivided impartible proportionate share in the land in plot No.A-249, Defence Colony, New Delhi.”

12. It would thus been seen that defendant No. 2 was to construct basement to the extent of maximum permissible covered area and that basement was agreed to be sold to the plaintiff for a total consideration of Rs 12.25

lac. The extent of permissible basement has been prescribed in Building Bye Laws 1983. The relevant Bye Laws read as under:

“(b) Plot coverage—The plot coverage shall be as follows:

- (i) (b) Above 100 sq. yds. (83.61 sq. mtr.), but not exceeding 300 sq. yds. (250.83 sq. mts.)
- (iv) Basement:
 - (b) Basement area shall not exceed the ground floor coverage and shall be below the ground floor. Basement area may however be extended below the internal courtyard and shaft.

Admittedly, property No. 249, Defence Colony, New Delhi is constructed on a plot measuring 217 sq. yards. The maximum coverage on this plot, therefore, comes to about 130 sq. yards which would mean about 1172 sq. ft. Thus, basement, measuring up to 1172 sq. ft was permissible to be constructed on Property No. A-249, Defence Colony, New Delhi. Since the parties specifically agreed that defendant No. 1 was to construct basement to the extent of maximum permissible covered area and agreed to sell that much to the plaintiff for a consideration of Rs 12.25 lac, defendant No. 2 was required to construct and defendant No. 1 was required

to sell, basement measuring 1172 sq. feet to the plaintiff in terms of the agreement to sell dated 27th March, 1997. The case of the defendants in the written statement is that the maximum permissible basement on Property No. 249, Defence Colony was 251.25 sq. ft which is patently incorrect. No material has been placed by the defendants on record to show that maximum permissible area for the basement was 251.25 sq. ft and not about 1172 sq. ft. I, therefore, have no hesitation in holding that the maximum permissible area for construction of basement on the suit property was about 1172 sq. ft.

13. The case of the defendants in the written statement is that they had constructed basement measuring 251.25 sq. ft. Ex.CW-2/PX-1 is the sale deed executed by defendant No. 1 in favour of Mr Manoj Kumar Kain and Mr Sanjay Sharma of M/s ESSEMM Realtors on 28th January, 2003. The relevant portion of this sale deed read as under:

“AND WHEREAS in according with Building Plan that were sanctioned by the M.C.D. at that time the Vendor was allowed to construct a basement measuring 290 sq. feet under the front half of the plinth area of the ground floor (Front Basement).

AND WHEREAS the Vendor has re-

constructed the said property including the said Front Basement. The reconstruction was carried out in such a manner so as to enable the construction of the balance basement under the rear half of the ground floor in case, in future, the construction thereof became permissible.

AND WHEREAS subsequently, sanction/permission of the M.C.D. necessary to excavate and/or regularize the balance basement under the rear half of the ground floor in the said property because of change in the building bye-laws permitting regularization thereof was obtained and the Vendor has accordingly constructed a basement measuring approx. 600 sq. feet in covered area under the rear half of the ground floor and behind the Front Basement with its own independent entrance.

AND WHEREAS the Vendor, for his bonafide needs and requirements, has agreed to sell the Front Portion of Basement Floor with front open area and the space under the staircase, measuring approx. 450 sq. feet, with right to use common toilet on the terrace, with superstructure standing therein, fittings & fixtures, with electric connection therein, of the Property bearing No.A-249, Defence Colony, New Delhi, measuring 217 sq. yards, together with proportionate, undivided, undivisible and impartible share of ownership rights in the land underneath (hereinafter referred to as "the said Portion"), unto the Vendees, for a total sum of Rs.1,00,000/- (Rupees one lac only) and the Vendees has agreed to purchase the same from the Vendor, for the same amount."

It would thus be seen that as per this document, the basement constructed initially on Property No. A-249, Defence Colony was 290 sq. ft., which is contrary to the plea taken in the written statement, where the constructed area of basement is stated to be 251.25 sq. ft. This sale deed clearly shows that as on 20th January, 2003, as much as 890 sq. ft. of the basement had been constructed on Property No. 249, Defence Colony, out of which area measuring 450 sq. ft. was sold by defendant No. 1 to Mr. Sanjay Sharma and Mr. Manoj Kain for a consideration of Rs 1 lac. Since under the agreement dated 27th March, 1997, the defendants had to construct basement to the extent of maximum permissible coverage which would mean about 1172 sq. ft., it is difficult to dispute that the plaintiff is entitled to specific performance of the agreement dated 27th March, 1997 at least to the extent of the whole of the basement which presently stands constructed on Property No. A-249, Defence Colony. Even if only 251.25 or 290 sq. ft of the basement was constructed initially and the rest was constructed later as stated in the sale deed Ex.CW-2/PX-1, that would make no difference to the case of the plaintiff

since it is entitled to the whole of the basement which could have been legally constructed on this property. It would be pertinent to note here that it is the Building Byelaws, 1983 which were in force at the time the agreement to sell was executed and the permissible area of the basement under those byelaws comes to about 1172 sq. ft.

14. The main plea taken by the defendants is that they had constructed basement measuring about 251.25 and offered that basement to the plaintiff which failed to take its possession. However, there is no documentary evidence of the defendants having offered possession of any part of the basement of Property No. 249, Defence Colony to the plaintiff. The agreement between the parties for construction and sale of the basement was a written agreement. The plaintiff-company surrendered the possession of the ground floor of the suit property and in consideration of the defendants agreeing to construct and sell the basement floor to it. The plaintiff-company had to pay only Rs 2 lac to the defendants, since Rs 10 lac which were to be paid to it as the compensation for surrender of tenancy rights in the ground floor, were to be adjusted towards payment of the balance sale consideration for the

basement floor and a sum of Rs 25,000/- was paid by it at the time of the execution of the agreement. It is extremely difficult to accept that the plaintiff-company was not willing to purchase the whole of the basement floor even if it had to pay only a rather paltry sum of Rs 2 lac as the sale consideration.

15. Defendant No. 1 knew that he had entered into a written tripartite agreement for sale of the basement floor to the plaintiff. Had the plaintiff been reluctant or unwilling to take the basement from him, as is claimed by the defendants, he would at least have given a written notice to the plaintiff-company requiring it to pay the balance amount, take possession of the basement and get the sale deed executed in its favour. In any case, defendant No. 1 has not bothered even to come in the witness box to controvert the evidence produced by the plaintiff in this regard. PW-1 Ms. Nisha Mahendru, Executive Director of the plaintiff-company, on the other hand, has specifically stated that the defendant had failed to complete the basement as per agreement between the parties. She has further stated that in the first week of December, 1997, the Managing Director of the plaintiff company had contacted

defendants No. 1 and 2 and requested them to hand over physical possession of the basement to the plaintiff company. They, however, expressed their inability to do so on the plea that the work was far behind schedule. She has further stated that the plaintiff has always been ready and willing at all material times to perform its part of the contract and it were the defendants who failed to construct the basement and deliver vacant and physical possession in terms of the agreement dated 27th March, 1997. Dishonesty on the part of defendant No. 1 in this regard is evident from the fact that as against permissible basement about 1172 sq ft., he constructed a basement measuring only about 251.25/290 sq. ft.

16. Dishonesty on the part of both the defendants becomes more explicit from the agreement dated 23rd July, 1997 whereby defendant No.1 agreed to sell the entire ground floor and entire basement floor of the suit property to defendant No.2 for a consideration of Rs.13 lac. The basement was to be constructed and its possession was to be delivered to the plaintiff within 08 months from the agreement dated 27th March, 1997 which would mean - by the end of November, 1997. The conduct of the defendants

in entering into agreement dated 23rd July, 1997 (Exh. CW-1/PA) therefore clearly shows that they never intended to deliver the possession of the basement to the plaintiff, in terms of agreement to sell dated 27th March, 1997, which is a document filed by none other than defendant No.2. Mr. Prabhjit Singh, who is the only witness produced by defendant No.2 has admitted in his cross examination that they had not obtained completion certificate of the suit building. This is yet another proof that the defendants never intended to transfer the basement to the plaintiff and that is why they did not bother even to apply for issue of completion certificate to MCD. Mr. Prabhjit Singh has contradicted himself even with respect to the month in which the construction of the basement was completed by them. In his affidavit by way of evidence, he stated that defendant No.2 completed construction of the basement as per sanctioned plan in November, 1997 whereas in his cross examination he stated that they had completed construction of the basement in all respects sometime in May/June, 1997.

17. One of the objections taken in the Written Statement is that since the agreement to sell provided for

payment of Rs.10 lac to the plaintiff for surrender of the tenancy rights in the ground floor portion and adjustment of that amount towards payment of sale consideration of the basement floor, the consideration being unlawful in terms of Section 23 of the Indian Contract Act, the agreement is void and unenforceable in law. Section 23 of the Indian Contract Act, 1872, to the extent it is relevant, provides that the consideration or object of an agreement is lawful, unless it is forbidden by law or is of such a nature, if permitted, it would defeat the provisions of any law. Section 24 of the Indian Contract Act, to the extent it is relevant, provides that if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object is unlawful, the agreement is void. When questioned in this regard, the learned Counsel for the plaintiff stated that the rent of the ground floor premises which defendant No.1 had let out to the plaintiff and which it had vacated pursuant to the agreement to sell dated 27th March, 1997 was Rs.6,000/- p.m. Section 5(3) of Delhi Rent Control Act provides that it shall not be lawful for the tenant to receive any payment in consideration of the relinquishment of tenancy of any

premises. Therefore, if the provisions of Delhi Rent Control Act apply to the Ground Floor which was let out to the plaintiff and was vacated by it pursuant to the agreement to sell dated 27th March, 1997, the part of the consideration may be held unlawful and consequently the agreement may be void. Section 3 (c) of Delhi Rent Control Act, to the extent it is relevant provides, that nothing in the Act shall apply to any premises whether residential or not, whose monthly rent exceeds Rs.3500/-. Hence, the provisions of Delhi Rent Control Act including Section 5 thereof do not apply to the ground floor premises which defendant No.1 had let out to the plaintiff and which was surrendered by the plaintiff company pursuant to the agreement to sell dated 27th March, 1997. No other provision of law, prohibiting payment of compensation to a tenant for surrendering the tenancy rights has been brought to my notice. I, therefore hold that the consideration or object of the agreement to sell dated 27th March, 1997 cannot be said to be unlawful.

18. It has come in evidence that during pendency of this suit basement measuring about 450 sq. feet has been sold by defendant No.1 to Mr. Manoj Kain and Mr. Sanjay Sharma who are carrying business under the name and

style of M/s.ESSEMM Realtors, vide sale deed dated 28th January, 2003. Hence a legal question arises in this case, as to whether the plaintiff can obtain specific performance of the agreement dated 27th March, 1997 and possession of the whole of the basement constructed in the suit property without seeking cancellation of the sale deed dated 28th January, 2003 executed by defendant No.1 in favour of Mr. Sanjay Sharma and Mr. Manoj Kain. As noted earlier, vide order dated 3rd August, 1998 this Court had directed the parties to maintain status quo in respect of ground floor and basement floor of property No.A-249, Defence Colony, New Delhi. Vide subsequent order dated 10th November, 1998, the injunction was restricted to the basement floor alone. The injunction order to the extent it pertained to the basement floor of the suit property has never been vacated by this Court. According to Mr. Sanjay Sharma and Mr. Manoj Kain, they had initially taken the basement portion on rent vide lease deed dated 19th March, 2002 and later on they purchased the same vide sale deed dated 28th January, 2003. In view of the injunction order passed by this Court on 3rd August, 1998, the defendants could not have let out the basement portion to Mr. Sanjay Sharma and Mr. Manoj

Kain and they could not have sold it to them vide sale deed dated 28th January, 2003. The lease created as well as the sale deed executed in their favour being in violation of the injunction order passed by this Court are void *ab initio* and *non est* in law, which the Court is required to ignore from consideration. If a person who has been granted an injunction in his favour and who is not a party to such a transaction is made to seek cancellation of the documents evidencing such a transaction, this would only encourage unscrupulous litigants to circumvent the process of law and violate the orders of the Courts with impunity, which will not be conducive to public policy and would undermine the process of law and its institutions and that to at the cost of a bona fide litigant who comes to the Court for redressal of his genuine grievances. It is settled proposition of law that when the Court passes such an order, it not only directes but also presumes that the position which existeds at the time of passing the order, continues to exist. Any other construction of law on the subject would be contrary to public interest and subvert the cause of justice.

19. In **Surjit Singh & Ors. v. Harbans Singh & Ors.** AIR 1996 SC 135, the Court, in a suit for partition and

possession of properties, passed an order restraining the parties to the suit from alienating or otherwise transferring any part of the suit property. One Pritam Singh however, assigned his rights under the preliminary decree by a registered deed partly in favour of his lawyers and partly in favour of others despite restraint order which the trial Court had passed. The assignees sought impleadment as parties to the proceedings. Their application was allowed by the trial Court and the appeal against that order was rejected by the first Appellate Court as well as by the High Court. Supreme Court however, did not agree with the view taken by the Courts below and while allowing the appeal, inter alia observed as under:

In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes.

In Delhi Development Authority v. Skipper

Construction Co.(P) Ltd. & Anr. (1996) 4 SSC 622, while dealing with the question as to whether the contemnor should be allowed to enjoy and retain the fruits of his contempt, Supreme Court was of the view that a contemnor ought not to be permitted to enjoy and/or to keep the fruits of his contempt. In this regard the Court inter alia observed as under:

To the same effect are the decisions of the Madras and Calcutta High Courts in Century Floor Mills Ltd. v. S.Suppiah and Sujit Pal v. Prabir Kumar Sun. In Century Flour Mills Ltd. it was held by a Full Bench of the Madras High Court that where an act is done in violation of an order of stay or injunction, it is the duty of the Court, as a policy, to set the wrong right and not allow the perpetuation of the wrongdoing. The inherent power of the court, it was held, is not only available in such a case, but it is bound to exercise it to undo the wrong in the interest of justice. That was a case where a meeting was held contrary to an order of injunction. The Court refused to recognize that the holding of the meeting is a legal one. It put back the parties in the same position as they stood immediately prior to the service of the interim order.

In Sujit Pal a Division Bench of the Calcutta High Court has taken the same view. There, the defendant forcibly dispossessed the plaintiff in violation of the order of injunction and took possession of the property. The Court directed the restoration of possession to the plaintiff with the aid of police. The Court observed

that no technicality can prevent the Court from doing justice in exercise of its inherent powers. It held that the object of Rule 2-A of Order 39 will be fulfilled only where such mandatory direction is given for restoration of possession to the aggrieved party. This was necessary, it observed, to prevent the abuse of process of law.

In **Mulraj v. Murti Raghonathji Maharaj** AIR 1967

SC 1386, Supreme Court considered the effect of action taken subsequent to passing of an interim order in its disobedience and held that an action taken in disobedience of the order passed by the Courts would be illegal and a nullity.

In **Arjan Singh v. Punit Ahluwalia & Ors.** (2008) 8

SSC 348 Supreme Court inter alia observed as under:

We must also take notice of the fact that even a court in exercise of its inherent jurisdiction under Section 151 of the Code of Civil Procedure, in the event of coming to the conclusion that a breach to an order of restraint had taken place, may bring back the parties to the same position as if the order of injunction has not been violated. (Gurunath Manohar Pavaskar v. Nagesh Siddappa Navalgund).

Thus, the lease deed and the sale deed executed by defendant No.1 in favour of Mr. Sanjay Sharma and Mr. Manoj Kain being in violation of the injunction order passed

by this Court have to be treated as a nullity and *non est* in the eyes of law. The plaintiff therefore needs not seek cancellation of these documents in order to claim specific performance of the agreement to sell dated 27th March, 1997.

20. Clause 16(c) of the agreement to sell dated 27th March, 1997 reads as under:

If for any reason whatsoever, the demised premises are constructed but are not delivered to the Vendee in consonance with present agreement, without prejudice to the foregoing rights of the Vendee to seek specific performance of the agreement, the Vendor shall be liable to pay to the Vendee liquidated damages which are agreed and quantified at Rs.25 lac (Rupees Twenty Five Lac Only).

Since, defendant No.1 constructed/got constructed the basement in property No. A-249, Defence Colony but did not deliver its possession to the plaintiff, he is liable to pay the aforesaid sum of Rs.25 lac as liquidated damages to the plaintiff company. Since the right given to the plaintiff company to recover the aforesaid sum of Rs.25 lac as liquidated damages was without prejudice to its right to seek specific performance of the agreement, execution of the sale deed in favour of the plaintiff company and delivery of

the possession of the basement floor to it also, will not absolve him of his contractual liability to pay the aforesaid amount to the plaintiff company. Moreover, it can hardly be disputed that the plaintiff company needs to be compensated for being deprived of the possession of the basement for about 14 years which have passed since the last date stipulated for completion of construction of the basement. The plaintiff company got the advantage of retaining Rs.2 lac which it would have paid to defendant No.1 had it been given the possession of basement floor to it in terms of the agreement to sell dated 27th March, 1997 but, this is a rather insignificant benefit as compared to the loss in the form of deprivation of the basement floor for almost 14 years.

The issues are decided in favour of the plaintiff and against the defendants.

ORDER

In view of my findings on the issues, a decree for specific performance of the agreement to sell dated 27th March, 1997 and for recovery of Rs.25 lac with proportionate costs is hereby passed in favour of the plaintiff and against both the defendants. A decree for

possession of the whole of the basement floor of property No. A-249, Defence Colony, New Delhi is also passed in favour of the plaintiff and against the defendants. Defendant No.1 is directed to execute an appropriate sale deed in favour of the plaintiff company in respect of the whole of the basement floor of property No.A-249 Defence Colony, New Delhi within 08 weeks from today after obtaining permissions, if any, required for this purpose. The plaintiff is directed to deposit the balance sale consideration of Rs.2 lac in this Court by way of a Demand Draft/Pay Order in the name of Registrar General of this Court within two weeks from today. In case of failure of the plaintiff to deposit the aforesaid amount, it will not be entitled to decree for specific performance of the agreement to sell dated 27th March, 1997 and to this extent the suit shall stand dismissed without any further orders.

Decree sheet be drawn accordingly.

IA No. 5530/2004 (O. 39 R. 2A CPC)

The grievance of the petitioner is that in violation of the injunction order passed by this Court defendant No.1 first created the lease of a part of the basement floor and then sold 400 sq. feet area out of it to Mr. Sanjay Sharma

and Mr. Manoj Kain. In the application, the plaintiff sought appropriate action only against the defendants for breach of the interim injunction granted by this Court. The other prayers made in the application were for attachment of the ground floor of the suit property and appointment of a receiver in respect of the ground floor. In this application the plaintiff made no prayer for punishing Mr. Sanjay Sharma and Mr. Manoj Kain. There was no averment in this application that Mr. Sanjay Sharma and Mr. Manoj Kain were aware of the interim orders passed by this Court on 3rd August, 1998 and 10th November, 1998 and that they took the basement portion on rent and later purchased it despite knowledge of the interim orders passed in the suit. In its reply, filed through Mr. Manoj Kain M/s ESSEMM Realtors has claimed that it was not aware of the present suit and had not violated any order passed by the Court. It is also alleged that the applicants took the basement portion on rent vide registered lease deed dated 14th March, 2002 and later purchased it vide sale deed dated 28th January, 2003. Notice of this application was issued by the Court initially to defendant No.1 but could not be served on him. Later, the notice was issued to ESSEMM Realtors. The

application has however been contested by Mr. Sanjay Sharma and Mr. Manoj Kain.

21. It was pointed out by the learned Counsel for the plaintiff that the defendants had agreed to sell the basement to be constructed in the suit property to the plaintiff for Rs.12.25 lac whereas Mr. Sanjay Sharma and Mr. Manoj Kain claim to have purchased area measuring 450 sq. feet for a paltry sum of Rs.1 lac which shows that they are not the bona fide purchasers. No doubt the sale consideration as indicated in the sale deed Exh. CW-2/PX1 is grossly inadequate for basement area measuring 450 sq. feet when the plaintiff had agreed to purchase basement area which could be about 1172 sq. feet for a consideration of Rs.12.25 lac. Moreover, the agreement to sell in favour of the plaintiff was executed on 27th March, 1997, which is about 6 years before the sale deed in favour of Mr. Sanjay Sharma and Mr. Manoj Kain was executed. Therefore, there is a possibility that these persons knew of the injunction order passed by this Court and that is why they took a calculated risk by taking possession of the basement portion measuring about 450 sq. feet for a meager consideration of Rs.1 lac. However, yet another possibility in the matter is that the

entire sale consideration paid by Mr. Sanjay Sharma and Mr. Manoj Kain to defendant No.1 was not reflected in the sale deed. I would like to add here that this is not the case of Mr. Sanjay Sharma and Mr. Manoj Kain that they had paid more than Rs.1 lac for purchase of the basement floor, but, underreporting of the sale consideration is rather frequent in our country, in the transactions relating to sale and purchase of immovable properties.

22. It was contended by the learned Counsel for the plaintiff that Mr. Sanjay Sharma and Mr. Manoj Kain did not make any inquiry from defendant No.2 despite the fact that one of them i.e. Mr. Sanjay Sharma was a witness to the collaboration agreement between defendants No. 1 & 2. This, to my mind, cannot be held against Mr. Sanjay Sharma and Mr. Manoj Kain in case they were not aware of the agreement to sell executed by defendants No. 1 & 2 in favour of plaintiff on 27th March, 1997. It is true that Mr. Sanjay Sharma and Mr. Manoj Kain are real estate agents and the directors and staff of defendant No.2 was known to Mr. Sanjay Sharma as admitted by him in his cross examination, but, even that would not indicate that they were aware of the interim orders passed by the Court in this

suit. If they had no knowledge of the agreement executed by the defendants in favour of the plaintiff they had no occasion to make any such inquiry from the Directors or staff members of the defendant No.2. They being real estate agents would not mean that they would necessarily be aware of the injunction order passed by the Court in the suit. To my mind, the only circumstance which can be held against Mr. Sanjay Sharma and Mr. Manoj Kain in this regard is the amount of the sale consideration which they claim to have paid to defendant No.1 for purchase of basement portion measuring about 450 sq. feet.

23. The next question which comes up for consideration is as to what order, if any, the Court should pass against Mr. Sanjay Sharma and Mr. Manoj Kain in this application. The learned Counsel for Mr. Sanjay Sharma and Mr. Manoj Kain has relied upon the decision of Orissa High Court in **Prafulla Kumar Mohapatra v. Jaya Krushna Mohapatra & Ors.** AIR 1994 Orissa 173 where it was held that ordinarily the persons who are not parties to the suit are not to be proceeded against for disobeying the injunction, the exception being, where it is alleged and proved that the person who violated the order was an agent

or servant or workman of the person against whom the order of injunction was passed. It was further alleged that if a person who is not a party to the suit is sought to be proceeded against for disobedience of the order passed by the Court it has to be proved by sufficient and unimpeachable evidence that he was guilty of abetting the violation of the injunction. Of Course, if Mr. Sanjay Sharma and Mr. Manoj Kain were aware of the injunction orders passed by this Court in the suit they would be guilty of abetment since in that case by agreeing to purchase the basement portion they encouraged defendant No.1 to disobey the order of the Court.

In my view considering all the facts and circumstances of the case, the ends of justice in this case would be adequately met if Mr. Sanjay Sharma and Mr. Manoj Kain are directed to deliver possession of the basement floor occupied by them in property No.A-249 Defence Colony to the plaintiff without demur or protest, within 04 weeks from the date of this order. Even otherwise, the basement portion having been purchased by them in violation of the injunction order, the sale in their favour is *non est* and nullity in the eyes of law and it confers

no right, title or interest on them in respect of the basement portion purchased by them and they are liable to be evicted therefrom. Mr. Sanjay Sharma and Mr. Manoj Kain are accordingly directed to deliver peaceful and vacant possession of the basement portion occupied by them in Property No. A-249 Defence Colony to the plaintiff without demur or protest within 04 weeks from today. The application stands disposed of in terms of this order.

(V.K. JAIN)
JUDGE

OCTOBER 21, 2011
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