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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on: March 31, 2011
Judgment pronounced on: April 25, 2011

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C.S. (OS) No. 2176/1999

% M/s. Chetanya Properties & Investment Ltd.... Plaintiffs
Through: Mr. K.N. Kataria, Senior Advocate
with Mr. K.P. Mavi, Advocate

versus

Nainital Bank Ltd. ... Defendant
Through: Mr. Janendra Lal and Ms. Yasmin
Tarapore, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
 2. To be referred to Reporter or not?
 3. Whether the judgment should be reported in the Digest?
- No.

SUNIL GAUR, J.

1. Breach of commitment by the Defendant to take Plaintiff's office premises at 18/17, Western Extension Area, Dhaka House, Pusa Road, Karol Bagh, New Delhi, (hereinafter referred to as the suit property) having carpet area of 2950 sq.ft., on agreed rent of Rs.58/- per sq.ft. per month, for a period of at least five years, has propelled the Plaintiff to slap this suit for damages of Rs.20,53,200/- upon the Defendant.

2. It is Plaintiff's assertion that its Offer to lease out the suit property to the Defendant was made vide letter of 28th October 1997 (Ex.P-1), which was duly accepted by the Defendant vide letter of 29th December 1997 (Ex.PW-2/3) and it was clarified by the Plaintiff vide letter of 8th April 1998 (Ex.P-5), to the Defendant that the lease of the suit property was valid up to the year 2016 and was extendable upto another thirty years on deposit of nominal lease money. As per the Plaintiff, it was also clarified to the Defendant that the suit property stood mutated in the name of the Plaintiff and there was no need of obtaining a probate of the Will in respect of the suit property and the '*No Objection Certificates*' (Ex.PW-1/5 and Ex.PW-1/6) of the Competent Authorities had been already obtained and communicated to the Defendant vide letter of 20th August, 1998 (Ex.P-8).

3. It is asserted on behalf of the Plaintiff that there was a concluded Agreement between the parties regarding lease of the suit property and what was required to be done by the Defendant was to formally execute the Lease Deed in respect of the suit property on the aforesaid terms. Plaintiff claims that vide letter of 23rd March, 1998 (Ex.P-3), Defendant was informed that the suit property was ready for occupation but the Defendant had not responded. On Plaintiff's behalf, it is projected that vide letter of 18th December, 1998, certain facilities were extended to the Defendant to make the aforesaid offer more lucrative, but the

Defendant raised certain extraneous query, which were clarified by the Plaintiff vide letter of 8th April, 1998 (Ex.PW-1/13).

4. Vide letter of 26th September, 1998 (Ex.DW-2/2), it was conveyed by the Defendant to the Plaintiff that despite various reminders, during the past eight months, the requisite documents have not been furnished by the Plaintiff, thereby indicating that the Plaintiff was not interested in letting out the suit property to the Defendant and since the Plaintiff had failed to keep the commitment, therefore, the Defendant had reserved its right to claim damages/compensation. Again, vide letter of 23rd March, 1999 (Ex.PW-1/14) Defendant had conveyed to the Plaintiff that it will not be able to take the possession of the suit property till the Plaintiff had submitted the requisite documents/approved plans. However, Plaintiff asserts that no details of the required documents were given by the Defendant and approved plans were not required because no new construction was carried out and alteration/modifications in the suit property was made for which no sanction from the Competent Authority was required and it was conveyed to the Defendant that it cannot wriggle out from the firm commitment of taking the suit property on lease as the Plaintiff had already spent huge amount of money in making the suit property suitable for Defendant's requirements, but the cryptic response of the Defendant vide letter of 20th April, 1999 (Ex.P-10) was that proposal to take the suit property on

lease was not found to be suitable. However, to the Legal Notice of 19th May, 1999 (Ex.PW-1/16), there is a detailed response of 1st June, 1999 (Ex.P-11) of the Defendant, detailing the reasons for not accepting Plaintiff's proposal of leasing out the suit property to the Defendant. Not satisfied with the Defendant's response of 1st June, 1999 (Ex.P-11), Plaintiff has come up with this suit to claim damages alleging breach of commitment by the Defendant to take the suit property on lease.

5. Defendant resisted this suit by asserting that the suit property was not got ready for occupation within stipulation time nor its plans were approved and infact, the lease of the suit property in favour of Plaintiff has already expired, and the application made by the Plaintiff to the Authorities concerned, i.e., DDA for renewal of the lease was pending consideration and this was not disclosed by the Plaintiff to the Defendant and apart from aforesaid concealment of fact, there was risk of sealing etc., in occupying the suit property. Apart from this, as per the Defendant, there was no concluded contract between the parties and so, there is no question of Plaintiff seeking damages from the Defendant and breach, if any, of the alleged Agreement in question, was by the Plaintiff and not by the Defendant. In the replication, averments in the plaint have been reiterated.

6. The Issues claimed by the parties to this suit, are as under:-

- (i) *Whether the suit of the Plaintiff is not maintainable? OPD*
- (ii) *Whether the plaint has been signed and the suit filed and instituted by a duly authorized person? OPP*
- (iii) *Whether the Plaintiff is guilty of misrepresentation of facts? OPD*
- (iv) *Whether at the pertinent time, the lease in favour of the Plaintiff was in subsistence and the Plaintiff was competent to lease the premises? OPP*
- (v) *Whether the plans for the premises were duly approved and the Defendant entitled to occupy the same? OPP*
- (vi) *Whether it was not permissible for the Defendant to carry on commercial business out of the said premises? OPP*
- (vii) *Whether the Plaintiff fulfilled the terms and conditions pursuant whereto the lease was to be executed? OPP*
- (viii) *Whether any concluded and binding contract never came into existence between the parties? If so whether the same is not void or voidable at the option of the Defendant? OPD*
- (ix) *Whether no cause of action has accrued to the Plaintiff against the Defendant? OPD*

Additional Issues, framed on 02.09.2003:

- (x) *Whether the Plaintiff is entitled to any amount from the Defendant? If so, how much? OPP*
- (xi) *To what amount the Plaintiff is entitled as interest? OPP*
- (xii) *Relief.*

7. Apart from the deposition of Shri Ishar Singh (PW-1), Director of the Plaintiff – Company and of Shri K.C. Tewari, (DW-1), Senior Branch Manager of Defendant bank, there is deposition of Mr. Jai Singh (PW-2), from DDA, regarding letter of 22nd June, 1998 (Ex.PW-2/1) giving conditional ‘*No Objection Certificate*’ to the Plaintiff for opening a branch of the bank in the Karol Bagh area and of Shri S.S. Tokas, (PW-3), from MCD regarding giving of ‘*No Objection Certificate*’ for running the bank in the premises in Karol Bagh area. There is also deposition of Shri U.D. Oli, (DW-2), Manager (Premises) Head Office of Defendant Bank, in support of the stand taken by the Defendant in this suit. The deposition of Shri S.K. Sharma, (DW-3), UDC from DDA is of no assistance as the summoned record was found to be not traceable. There is no other evidence on record.

8. At the conclusion of trial, learned counsel for both the parties had made their respective submissions and had extensively referred the evidence on record and reliance has been also placed upon the

decisions in *Baron International Airways vs. Haj Committee & Anr.*, AIR 1997 Delhi 247; *M.V. Shankar Bhat and another vs. Claude Pinto (D.) by LRs. And Ors.*, AIR 2004 SC 636; *Dresser Rand S.A. vs. M/s. Bindal Agro Chem Ltd. & Anr.*, AIR 2006 SC 871; *Union of India vs. Hardeep Engineers P. Ltd.*, 148 (2008) DLT 562; *Bajjnath vs. Kshetrahari Sarkar*, AIR 1955 Calcutta 210; *H.G. Krishna Reddy and Co. vs. M.M. Thimmaiah and another*, AIR 1983 Madras 169; *Binani Metals Ltd. vs. Union of India*, 114 (2004) DLT 637 (DB); *Deepak Ansal vs. Ansal Properties and Industries Ltd.*, 138 (2007) DLT 560.

9. After having considered the submissions advanced, the decisions cited and upon analysis of evidence on record, findings returned on the Issues framed are as follows:-

Issue No.: (ii)

10. Plaintiff is a Limited Company and this suit has been instituted by it on the strength of the certified copy of the certificate of incorporation issued by the Registrar of Companies, which is duly proved on record, as Ex.PW-1/1 and on the basis of the Resolution of 17th September, 1999, in favour of Shri Ishwar Singh, Director of the Plaintiff – Company, which is duly incorporated in the Minutes Book of the Plaintiff – Company, which is proved on record as Ex.PW-1/2. There is no cross-examination of Shri Ishwar Singh (PW-1), Director of the Company, who

has deposed on the basis of the aforesaid document, regarding the valid institution of this suit and even at the hearing, it was not shown as to whether there was any defect in the aforesaid documents on the basis of which this suit has been validly instituted. Accordingly, it is held that the suit has been validly instituted.

Issue No.(iv) to (vii)

11. These four Issues are inter-linked and are being taken up together as they relate to the fundamental Issue of there being any concluded Agreement/contract between the parties and of there being breach thereof and by whom.

12. The Offer vide letter of 28th October 1997 (Ex.P-1) to lease out the suit property to the Defendant was principally accepted by the Defendant vide Communication (Ex.P-2) on certain terms and conditions and the basic Term and Condition No.9 about which there is a serious dispute, needs to be adverted to. It reads as under:-

“9. Landlord to provide a copy of title of said property of landlord on the said property, to enable the bank to verify that it stands in their name in the land Records Office. They are also required to provide documents of their correlated to this property including resolution etc.”

13. In response to Defendant's query, what was conveyed by the Plaintiff to the Defendant on 8th April, 1998 vide Communication (Ex.P-5), was as under:-

"The lease of the plot is valid up to the year 2016 and after that its renewal shall be made by depositing the nominal lease money and same will be extended for other thirty years."

14. Pertinently, it is the Plaintiff, who has placed on record Communication of 15th May 1998, by the concerned Authority, i.e., DDA to the Plaintiff on the subject of renewal of the Lease Deed in respect of the suit property and what was conveyed, deserves attention. It reads as under:-

"Subject: Renewal of lease deed in respect of Plot No.2, Block NN (Khasra No.1271/1144) Naiwala Karol Bagh, New Delhi.

Sir,

With reference to your letter dated 20.4.98 on the above subject I am to inform you that the lease in respect of the above plot in question is due for IIIrd renewal. The matter of enhancement of Ground rent is under consideration of Government of India and as soon as the same is decided the action for IIIrd renewal of the Lease Deed would be taken.

Yours faithfully,

*Sd/-
(K.R. Bagri)
Assistant Director (OSB)."*

15. Regarding obtaining of '*No Objection Certificate*', Plaintiff was asked by the concerned Authority, i.e., DDA vide Communication of 13th May 1998, to approach the concerned branch of the MCD for obtaining the same. It is relevant to take notice of the fact that in none of the Communications, i.e., Ex.P-6 to Ex.P-8, Plaintiff has uttered a word about the third renewal of the Lease Deed of the suit property by the Authorities concerned, i.e., DDA. It is only in the Communication of 27th April, 1998, (Ex.D-1) placed on record by the Defendant, Plaintiff had sought release of six months' rent as refundable security, while casually disclosing about the renewal of the Lease Deed of the suit property, in the following words:-

"That renewal of Lease Deed of Plot No.974-975-976n. NN Block, Main Arya Samaj Road, Karol Bagh, New Delhi, have since been applied to DDA New Delhi and the copies of the Lease Deed and application is attached for perusal. Also Mutation from the DDA for the above said property is attached."

16. On 6th August, 1998, vide Communication (Ex.DW-2/1), Defendant had sought production of the requisite documents/certificates and in particular, site plan of the suit property, duly approved by the Competent Authority and renewed Lease Deed of the suit property. Again on 26th September, 1998, Defendant had regretfully reminded the

Plaintiff vide Communication (Ex.DW-2/2), that despite various reminders, the requisite documents have not been furnished, thereby indicating that the Plaintiff is no longer interested in letting out the suit property to the Defendant who had reserved its right to claim damages for breach of the commitment by the Plaintiff to let out the suit property to the Defendant. Instead of furnishing the renewed Lease Deed of the suit property from the Competent Authority, Plaintiff vide Communication of 23rd November, 1998 (Ex.D-2), had informed the Defendant that the suit property is ready for occupation as per the requirement of the Defendant, while giving the following assurance:-

“We shall indemnify the bank for any loss suffered by the bank after shifting its branch to our building on account of its construction.”

17. Even in the Communication of 12th March, 1999 (Ex.D-3), 1st April, 1999 (Ex.D-4), 17th April, 1999 (Ex.D-5), and even in the Legal Notice of 19th May, 1999 (Ex.PW-1/16), Plaintiff had been referring to ‘*No Objection Certificate*’ from the concerned Authorities, etc., but has nowhere adverted to the crucial issue of renewal of the Lease Deed of the suit property and its sanctioned building plan from the Competent Authority, which was foremost in the mind of the Defendant in view of the *Warning* issued by the Municipal Corporation of Delhi by Public Notice (Ex. DW-2/4) in the newspaper of being beware before

purchasing or hiring a house/flat/shop, as some unscrupulous builders had built properties across the City without sanctioned of building plans or in violation of the sanctioned building plan and it was made clear by the Municipal Corporation of Delhi (MCD) to the public that such buildings were liable to face various actions under the provisions of Delhi Municipal Corporation Act, (DMC Act) such as demolition, sealing and prosecution. Even before the issuance of Legal Notice of 19th May, 1999 (Ex.PW-1/16), it was made clear by the Defendant to the Plaintiff vide Communication of 23rd March, 1999 (Ex.P-9) that the required documents/approved map (site plan), etc., of the suit property have not been submitted by the Plaintiff and decision on fresh proposal from the Plaintiff to the Defendant by the Board of the Defendant Bank has yet not been taken.

18. In the face of the aforesaid documentary evidence on record, Plaintiff cannot be heard to say that its application for renewal of the lease with the Competent Authority was pending and it was not rejected. It is not the case of the plaintiff that during the subsistence of the Plaintiff's Offer (Ex.P-1) of which there was conditional acceptance by the Defendant, the third renewal of the Lease Deed of the suit property by the Competent Authority was granted and was furnished to the Defendant. It is nobody's case that the third renewal of the Lease Deed of the suit property by the Competent Authority was a mere

formality and it cannot be so, because non renewal of the Lease Deed of suit property puts the title of the Plaintiff in respect of the suit property under a cloud. In view of the aforesaid Public Notice (Ex.DW-2/4), the apprehension of the Defendant was legitimate and Defendant was very well justified in issuing the impugned Communication of 19th May 1999 (Ex.PW-1/16) supplemented by Defendant's response/reply of 1st June, 1999 (Ex.P-11) as after waiting for about 8 months or so, the sanctioned building plan of the suit property was not forthcoming from the Plaintiff, therefore, the Defendant was well advised to reject the Plaintiff's proposal for leasing out the suit property to the Defendant. The impugned rejection of the Plaintiff's proposal is eminently justified, as the Plaintiff has not disclosed even during the present proceedings as to what was the follow-up communication from the DDA to the Plaintiff after the Communication of 15th May 1998 vide which Plaintiff was informed that the third renewal of the Lease Deed of the suit property would be undertaken after the matter of enhancement of ground rent, which is under consideration of Government of India, is finalized. It would have been indeed hazardous for the Defendant to have gone ahead with the Plaintiff's proposal of leasing out the suit property to the Defendant without sanctioned building plan of the suit property coming forth. In this view of the matter, mere issuance of '*No Objection Certificate*' (Ex.PW-1/3) for opening branch of a Bank in the suit

premises would not and could not have saved the Defendant from facing sealing of the suit property, prosecution etc., in absence of there being a sanctioned building plan of the suit property and about its adverse consequences, the Defendant had become aware from the Public Notice (Ex.DW-2/4). It is so said because, '*No Objection Certificate*' (Ex.PW-1/3) merely states that premises at Main Arya Samaj Road, Karol Bagh, is declared as local commercial for issuing the municipal trade license as per provisions of DMC Act and nothing more.

19. On the crucial aspect of the third renewal of the Lease Deed in respect of the suit property by the Competent Authority what the Plaintiff's star witness Ishwar Singh (PW-1) had to say in cross-examination is as under:-

"Proposed loan of Rs.10 lakhs was never carried forward as the Plaintiff did not require the money till the question of ground rent has not been decided, hence lease in respect of the suit premises had not been renewed."

20. In view of the aforesaid admission of non-renewal of the third lease of the suit property by the Competent Authority, strong reliance placed by the Plaintiff upon the '*No Objection Certificate*' of the Municipal Authorities for opening a branch of a Bank in the suit

premises, because the area being commercial, is of no consequence. More so, when Plaintiff fails to establish that the payment of betterment charges or other charges, as referred to in the Communication of 22nd June 1998 (Ex.PW-2/1), by the DDA was demanded, and if so, whether they were paid or not. The Plaintiff may have carried out some alteration in the suit premises but the same is of no avail in the absence of there being a sanctioned building plan of the suit property and mainly because of non-renewal of the third lease of the suit property by the Competent Authority. Due to these two fundamental lacunas, sealing, prosecution etc., as referred to in the Public Notice (Ex.DW-2/4) has been well avoided by the Defendant by rejecting Plaintiff's proposal/Offer (Ex.P-1).

21. In the face of the aforesaid findings, though the Plaintiff succeeds in proving that it was permissible to let out the suit property to the Defendant for commercial purpose, but the Plaintiff fails to prove that the sanctioned building plan of the suit property was duly approved by the Competent Authority and was forwarded to the Defendant. Inconsequentially, Issue No.(vi) is answered in favour of the Plaintiff but the main Issues No.(iv), (v) & (vii) are decided against the Plaintiff, as the third renewal of the lease in respect of the suit property was still pending before the Competent Authority and thus there was a clear cut default of aforesaid term and condition No.9 of the conditional

acceptance (Ex.P-2) requiring supply of the valid title document of the suit property. Needless to say the third renewal of the lease of the suit property was an essential component of the clear title of the suit property, as in the absence of the said renewal the title of the Plaintiff in the suit property would be in jeopardy. These four Issues are accordingly answered.

Issue No.: (i), (iii), (viii) & (ix)

22. A scrutiny of the evidence on record reveals that it was never disclosed in the first instance by the Plaintiff to the Defendant that the third renewal of the lease of the suit property, which was due, is awaited. Rather, after the conditional acceptance (Ex.P-2) by the Defendant, Plaintiff vide Communication of 8th April, 1998 (Ex.P-5) had disclosed to the Defendant that the lease of the suit property is valid up to the year 2016 and after that, renewal shall be made by depositing the nominal lease money. Much later, vide Communication of 27th April, 1998 (Ex.D-1), Plaintiff was constrained to disclose that the renewal of the Lease Deed of the suit property by the Competent Authority was pending and this was the impediment in there being a concluded contract between the parties and rightly so. Had the fact of pending third renewal of the lease deed of the suit property by the Competent Authority been disclosed by the Plaintiff in the first instance, then, obviously there would not have been any conditional acceptance of the

Plaintiff's Offer by the Defendant. Therefore, the Plaintiff is definitely guilty of suppression the aforesaid vital fact which goes to the root of the matter and so, Issue No.(iii) is answered in affirmative.

23. Though no reference to the decisions cited is required for the settled legal proposition, i.e., *where an Offer is not unconditionally accepted, no concluded contract can be said to have been arrived at*, but I find that the decisions reported in *Dresser Rand S.A. vs. M/s. Bindal Agro Chem Ltd. & Anr.*, AIR 2006 SC 871; *M.V. Shankar Bhat and another vs. Claude Pinto (D.) by LRs. And Ors.*, AIR 2004 SC 636; *Union of India vs. Hardeep Engineers P. Ltd.*, 148 (2008) DLT 562; *Deepak Ansal vs. Ansal Properties and Industries Ltd.*, 138 (2007) DLT 560; *Binani Metals Ltd. vs. Union of India*, 114 (2004) DLT 637 (DB); can be referred to with advantage in the support of the aforesaid proposition. In the instant case, it is quite obvious that the various correspondence, as referred to above, exchanged between the parties were nothing but a prelude to a contract, which was yet to be entered into by executing a registered Lease Deed and since a vital defect was found, i.e., of third renewal of the lease of the suit property by the Competent Authority being pending and of non furnishing of the sanctioned building plan of the suit property, therefore it can be safely held that there was no concluded contract between the parties. Issue No. (viii) stands answered accordingly.

24. In view of the findings returned as aforesaid, Issue No.(i) and (ix) have to be necessarily decided against the Plaintiff. These two Issues are accordingly answered. Consequentially, findings on Issue No.(x) & (xi) are also answered against the Plaintiff.

Issue No.: (xii)

25. In the face of the findings returned as aforesaid, it is held that the Plaintiff is not entitled to recover any amount whatsoever from the Defendant. Resultantly, this suit is dismissed while leaving the parties to bear their own costs.

26. This suit stands disposed of accordingly.

Sunil Gaur, J.

April 25, 2011
pkb