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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 16.04.2012

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FAO (OS) 98/2011 & CM No. 3795/2011

MR. CHUCKLES KOHLI & ORS.

..... Appellants

Vs

SHRI RAVINDER SINGH

..... Respondent

Advocates who appeared in this case:

For the Appellants: Mr Lovkesh Sawhney, Advocate.

For the Respondent: Mr Jasmeet Singh, Advocate.

CORAM :-

HON'BLE MR JUSTICE SANJAY KISHAN KAUL

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is an appeal filed by the original defendants against order dated 03.12.2010 passed by the learned Single Judge in IA No.9657/2008 in Suit no.1440/2008. The appellants had filed the said application under the provisions of Order 7 Rule 11 read with section 151 of the Code of Civil Procedure, 1908 (in short the Code) seeking a rejection of the plaint on the ground that it lacked cause of action as, according to them, there was no legally enforceable "agreement to sell" in existence.

2. In order to decide the appeal it would be useful to advert to the broad averments in the plaint made by the respondent.

2.1 Respondent, who is the original plaintiff, avers in his suit for specific performance qua a Memorandum of Understanding (in short MOU) dated 23.12.2005, that the appellants by virtue of the said MOU had agreed to the

sale of their undivided 1/3rd share in the property being: plot no.15, block no.172, Jor Bagh, New Delhi-110 003 (in short the suit property).

2.2 It is averred that the total consideration for sale of the suit property was fixed at Rs.3,87,50,000/-. It is alleged that towards the said consideration, in the first instance, a cheque of Rs.21 Lakhs was issued in favour of the appellants on the date of the execution of the MOU, which was thereafter replaced with a cheque of Rs.25 Lakhs.

2.3 There is a further averment in the plaint to the effect that, on 09.01.2006, the appellants agreed in writing to the extension of the final date for praying the balance amount.

2.4 It is also averred that the appellants having received a sum of Rs.25 Lakhs towards earnest money and/or part sale consideration, failed to fulfill their contractual obligations and consummate the transaction as agreed. The receipt, in respect of the said sum of Rs.25 Lakhs, as alleged was executed on 23.02.2006.

2.5 It is further alleged that the appellants, though belatedly, had referred to the fact that there was litigation pending qua the property in issue. However, the fact that there was no injunction on the sale of the suit property issued in the said litigation became quite clear to the respondent at a later point in time. The failure on the part of the appellants to honour its commitments constrained the respondents to write a letter dated 02.08.2006, calling upon the appellants to execute and register the necessary documents for concluding the transaction. The said communication was followed by yet another letter dated 07.05.2007, calling upon the appellants to "***close the deal***" within 15 days of the receipt of the said communication. A somewhat similar communication is alleged to have been sent thereafter on, 04.04.2008.

2.5 It is further averred that contrary to the assurance given, the appellants failed to fulfill their contractual obligations despite several reminders in that

regard. It is alleged that the appellants have no intention to honour their obligations and thus seek to retain the sum of Rs.25 Lakhs without coming forth to complete the transaction in terms of the aforementioned MOU.

2.6 It is categorically averred, that the respondent is ready and willing to pay the balance sale consideration of Rs.3,62,50,000/- provided the appellants execute the necessary documents i.e., the sale deed in his favour.

2.7 In the cause of action paragraph of the plaint, it is averred that the cause against the appellant arose for the first time when, the MOU was executed i.e., on 23.12.2005. It is further averred that it arose once again when, a sum of Rs.14 Lakhs was paid on 18.01.2006 to the appellants followed by payment of a further sum of Rs.11 Lakhs on 23.02.2006 towards advance / earnest money / part sale consideration. It is also averred that cause of action in favour of the respondent and against the appellants arose when various communications being: letters dated 02.08.2006, 07.05.2007 and 04.08.2008 were issued by the respondent to the appellants, calling upon them to fulfill their obligations under the MOU.

3. With the aforesaid pleadings in place, a suit was filed by the respondent on 30.05.2008, seeking a decree of specific performance against the appellants qua the MOU. A concomitant direction was also sought against the appellants for execution of sale deed and other documents in respect of the suit property.

4. The appellant, as noticed hereinabove, filed an application under Order 7 Rule 11 of the Code seeking rejection of the plaint. By the impugned judgment, the learned Single Judge has dismissed the said application.

5. Before us, Mr Sawhney, Advocate who appeared for the appellant has assailed the judgment of the learned Single Judge on the following grounds:

(i) A perusal of the MOU itself demonstrates that it is an agreement to enter into an agreement to sell. The MOU, by itself, was not an agreement to

sell, of which specific performance can be obtained. For this purpose, he relied upon the terms of the MOU, in particular, clause 2 and 3.

(ii) The MOU was to translate into an agreement to sell only upon the respondent conveying that, all documents were in order and he was agreeable to the understanding contained in the MOU being carried forward. In other words, according to the learned counsel, the respondent was to convey his acceptance of the understanding recorded in the MOU. In support of this submission reliance was placed on the provisions of Section 7 of the Indian Contract Act, 1872 (in short the Contract Act). Learned counsel thus submitted that, the MOU was merely a proposal and that its acceptance should be absolute and unqualified for the understanding to get converted into a legally enforceable agreement. In support of his submissions the learned counsel relied upon the following judgments: Randhir Singh Chandok vs Vipin Bansal & Anr. 135 (2006) DLT 56; M.V. Shankar Bhat & Anr. vs Claude Pinto since (deceased) By LRs 92003) 4 SCC 86 and Mayawanti vs Kaushalya Devi 91990) 3 SCC 1.

6. Having heard the learned counsel for the parties we are of the view that this appeal is without merit for the following reasons.

6.1 It would be trite to say that while adjudicating upon an application Under Order 7 Rule 11 of the Code all that the court is required to examine is the averments made in the plaint. At this stage, the court must treat the averments made in the plaint as correct and true. Therefore, whether a plaint discloses a cause of action or not would have to be ascertained from the pleadings made in that behalf. While undertaking such an exercise the court is not required to conduct a detailed enquiry into "doubtful" or "complicated" questions of law or fact. All that the court is required to ascertain is, whether the allegations throw up a cause of action. So long as the plaint discloses a cause of action or raises questions of fact and law, the suit ought not to be

dismissed however “weak” the action is or, is unlikely to succeed. [See observations made in Liverpool & London S.P. & I. Association Ltd. vs M.V. Sea Success & Anr. (2004) 9 SCC 512].

6.2 With the aforesaid principle of law in place let us examine the contention raised by the appellant in the plaint. The entire thrust of argument of the learned counsel for the appellant is on the terms contained in the MOU. Since the MOU is a brief document containing four clauses, we deem it fit to reproduce the same hereinbelow:

“I, on behalf of my mother Mrs Minnie Nair Kohli and my two sisters Mrs Pixy Kohli Kauble & Mrs Mishka Kohli Gira is getting into a Memorandum of Understanding with Mr Ravinder Singh regarding one property bearing no. 15, Jorbagh to sell our 1/3rd share on following understanding falling which this stands null and void.

1. Total consideration of Rs. 3,87,50,000/- (Rupees Three Crores Eighty Seven Lakhs and Fifty Thousand only).
2. Rs. 21,00,000/- (Rs. Twenty One lacs) received through cheque 895702 drawn on OBC, Connaught Place dated 23.12.05 as an intention to buy if all the documents are proper and Mr Ravinder Singh is satisfied then both of us will get into a proper agreement by 10th January, 2006. In case documents are not proper than I shall refund the money Rs 21,00,000/-.
3. In case everything is agreed by Mr Ravinder Singh then further payment of Rs 79,00,000 (Rs. Seventy Nine lacs) would be paid at the time of agreement to sell and balance Rs 2,87,50,000 (Rs. Two Crores Eighty Seven Lacs and fifty thousand only) shall be paid on or before 10th Feb. 2006.
4. I also agree that further to this transaction Mr Ravinder Singh will follow all the legal proceeding and will be entitled to any benefits which he can achieve out of that but will reimburse me the accumulated rent which has been received by my aunt till the date of sale...”

6.3 A perusal of the terms contained in the MOU would show that parties are ad idem as regards the necessary ingredients which are, fundamental to

the execution of valid and a legally enforceable agreement, of the like kind:

- (a) the particulars of the property in respect of which the transaction is envisaged;
- (b) the total sale consideration;
- (c) the manner in which it is required to be paid.

6.4 It is not unknown to law that specific performance of even oral agreement can be sought. In the present case the fundamental terms of the agreement obtaining between the parties are in writing and have been recorded in the MOU. The fact that there is a reference to the satisfaction of the respondent qua the underlying documents concerning the suit property, would not, in our view, give to the MOU a colour of an agreement which is not enforceable in law. Ordinarily, in relation to agreements pertaining to immovable properties time is not of the essence unless the parties so provide. Mr Sawhney's submission that a reading of clause 2 and 3 of MOU show that it was only after the respondent was satisfied with regard to the underlying documents pertaining to the suit property, and this satisfaction was communicated to the appellant, could it be said that there was an acceptance of the terms contained in the MOU is, in our view, is an argument that does not find resonance in the terms of the MOU. At the cost of repetition one can only say that in so far as the fundamental terms of the transactions were concerned they were agreed and provided for in the MOU. Nothing further had to be done from the point of view of the respondent as long as he was agreeable to take the transaction further. The appellant seeks to take advantage of a term which has been provided in the MOU to protect the respondent. The MOU may thus, if at all, be voidable at the behest of the respondent, but cannot most certainly be voided on the aforementioned ground, at the say so, of the appellant.

6.5 Therefore, the argument of the appellant that there was no

communication of the acceptance is, in our view, completely misconceived. Section 7 of the Contract Act would have no application as the acceptance of the terms is reflected in the MOU; the MOU not being in dispute. In this regard we must advert to another argument that was advanced by Mr Sawhney, which is that, for a MOU to be treated as an agreement to sell in law, it would have to, necessarily bear the signatures of the two contracting parties. This contention in our view is also misconceived. As noticed hereinabove by us specific performance can also be sought of an oral agreement, therefore, there is no necessity in law for an agreement to be in writing and more so for such a writing to bear the signatures of parties. More often than not it is difficult for the parties when suing for a specific performance based on an oral agreement to prove before the court the terms on which an agreement had been arrived at between the parties. In the instant case, fortuitously, the terms are reduced to writing which are reflected in the MOU and bear signatures of the appellant. As observed above, the MOU is not disputed. The fact that the respondent adhered to the terms of the MOU is reflected in the fact that, admittedly a sum of Rs 25 lacs has been paid by the respondent to the appellant. Therefore, by conduct it has been suitably demonstrated by both parties that a legally enforceable agreement was in place qua the suit property.

7. As a matter of fact in one of the judgment cited by the learned counsel for the appellant, this very course found favour with the court. See Para 9 at page 59 in the case of Randhir Singh Chandhok (supra).

8. Mr Sawhney has also argued that, clause 2 and 3 of the MOU provided for compliance of certain aspects on or before the dates adverted to therein. In this regard Mr Sawhney submitted that since the payment of the amounts referred to in the MOU was not made before 10.02.2006, the MOU stood dissolved. We are unable to agree, once again with the stand taken by the

appellant, for the reason that admittedly, the sum of Rs 25 lacs was paid in two tranches. While Rs 14 lacs was paid on 18.01.2006, the balance 11 lacs was paid on 23.02.2006. The latter date was certainly beyond 10.02.2006.

8.1 We put to Mr Sawhney as to whether the appellant had offered to return the money or, even recalled what he portrayed as a mere offer to sell the suit property. Mr Sawhney fairly conceded, that there was no such communication on this aspect.

9. As noticed hereinabove, the averments made in the plaint clearly demonstrate subsistence of a triable cause. The cause for the action flows from the MOU and the conduct of parties thereafter qua the payments made by the respondent towards the transaction in issue, and the unequivocal acceptance of the payment by the appellant. In these circumstances, in our view, it cannot be said that the plaint lacks cause of action, and hence, ought to have been rejected at the very threshold. We do not intend to discuss the judgments cited by the learned counsel for the appellant in detail as in the facts set out by us, vis-à-vis the present case, they have no applicability. The principle of law enunciated in both M.V. Shankar Bhat (supra) and Mayawanti vs Kaushalya Devi (supra) is well taken; it is the applicability to the facts, which is questioned. Undoubtedly, the first case pertained to whether or not parties had arrived at a concluded contract, while the second case laid down the principle that specific performance can be sought of only a valid contract. We have come to a conclusion, though prima facie, that the MOU is a concluded legally enforceable agreement. The test evolved in these cases is fulfilled. In so far as the last judgment is concerned, which is a judgment of this court, in fact supports the case of the respondent.

10. Therefore, for the reasons given above, we are of the view that the appeal deserves to be dismissed with cost. It is ordered accordingly. The appellant shall pay a cost of Rs 25,000/- to the respondent.

11. Needless to state, the observations made hereinabove will have no impact on the final adjudication in the case.

SANJAY KISHAN KAUL,J

RAJIV SHAKDHER, J

APRIL 16 , 2012
Yg/kk