

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: April 17, 2012

+ RFA (OS) 24/2008

SPRING VALLEY FINANCE & TRADE LTD. Appellant
Represented by: Mr.C.P.Vig, Advocate.

versus

PARKASH KAUR & ANR Respondents
Represented by: Mr.Ravinder Sethi,
Sr.Advocate, Mr.Raman
Kapur, Sr.Advocate
instructed by Mr.Dhiraj
Sachdeva and Mr.Rajiv
Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

PRADEEP NANDRAJOG, J. (Oral)

1. At the outset, Shri Ravinder Sethi, learned senior counsel for the respondents states that without prejudice to the stand taken by the respondents of the suit filed being barred by limitation, they are prepared to refund the earnest money in sum of ₹42 lakhs received by them from the appellant when the Agreement to Sell, Ex.PW-1/2, was executed on August 02, 1988 together with interest (simple) @6% per annum, reckoned from the said date till the date when the amount would be deposited by them in the name of the Registrar General of this Court, to be paid to the appellant provided the appellant agrees to the said offer so that

there is no further litigation between the parties.

2. Shri C.P.Vig, learned counsel for the appellant states that the offer is not acceptable to the appellant and that the appellant desires a decision on merits.

3. We have thus heard learned counsel for the parties and having concluded the hearing, proceed for judgment.

4. Relevant facts, briefly stated are, that on August 02, 1988, Agreement to Sell, Ex.PW-2/1, was executed; as per which late Smt.Prakash Kaur and Smt.Darshan Kaur, wives of S.Raghubir Singh, agreed to sell 8, Tolstoy Marg, New Delhi to the appellant for a sale consideration of ₹3.5 crores and received ₹42 lakhs towards earnest money cum part sale consideration.

5. As per clause-3 of the Agreement to Sell, balance sale consideration in sum of ₹3.08 crores had to be paid by the appellant when sale deed was executed and vacant possession of such portions which were capable of being physically delivered were handed over and symbolic possession of such portions of the property which could not be physically delivered was given. As per clause 5, 6 and 7 of the Agreement to Sell, necessary permissions had to be obtained from the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976, Section 269 (UC) of Chapter XXC of the Income Tax Act, 1961, L&DO and under Section 230(A) of the Income Tax Act.

6. As per Clause 8, the moment the necessary permissions as per Clauses 5 to 7 were obtained and intimation sent to the appellant, within 90 days balance sale consideration had to be paid by the appellant requiring the respondents to execute the

sale deed.

7. In compliance with their obligation to obtain the necessary permissions from the various authorities, respondents submitted necessary applications and vide Ex.D-1, letter dated September 23, 1989, informed the appellant that mutation had been effected in the records of L&DO in their name and vide another letter dated October 31, 1989 informed that necessary no objection had been obtained under Chapter XXII(C) of the Income Tax Act. The letter has not been exhibited at the trial, but we are referring to the same as learned counsel for the appellant does not dispute the appellant having received said letter. With respect to the necessary permission from the Competent Authority under the Urban Land (Ceiling and Regulations) Act, 1976, it transpired that no permission was required, inasmuch as vide order dated April 16, 1986, the Competent Authority had already held that there was no excess vacant land.

8. Vide letter dated September 23, 1989 Ex.D-1, respondents informed the appellant that they were enclosing photocopies of all the necessary sale permissions required and called upon the appellant to pay the balance sale consideration and get the sale deed registered. The appellant responded vide letter dated September 22, 1989, Ex.D-2, informing that it had not received the photocopies of the letters allegedly sent and also raised an issue of the respondents requiring to pay all rates, cesses, taxes etc. in relation to the property in question. The respondents responded vide letter dated September 30, 1989, Ex.D-4, and forwarded another set of documents to the buyer, being the necessary sale

permissions obtained by them from all the authorities, which fact was acknowledged by the appellant vide Ex.D-5, a letter dated October 07, 1989, written by the Advocate of the appellant to the respondents, in which it was intimated that upon the respondents furnishing proof of having made payments of all taxes, ground rent etc. the necessary sale consideration would be paid.

9. There was a lull for the next six months. On April 02, 1990, vide Ex.D-7, the respondents informed the appellant that they have performed all their obligations under the Agreement to Sell and once again called upon the appellant to pay the balance sale consideration and along with the letter, enclosed documents evidencing that ground rent, house tax etc. had been cleared upto date.

10. The appellant did not come forward to tender the balance sale consideration and ultimately vide letter dated February 12, 1992, Ex.D-8, the respondents intimated to the appellant that they had cancelled the agreement and had forfeited the earnest money.

11. The suit seeking decree for specific performance was filed by the appellant on March 30, 1995.

12. At the forefront of the written statement was the plea of limitation by pointing out that way back on April 02, 1990, vide Ex.D-7, the respondents had intimated to the appellant of having obtained all necessary permissions and also having paid all dues with respect to the property in question and that since the appellant did not come forward to execute the sale deed, vide notice dated February 12, 1992 Ex.D-8, they had cancelled the

Agreement to Sell and had forfeited the earnest money-cum-part sale consideration paid. On merits, it was pleaded that the appellant was not ready and willing to perform its obligation under the Agreement to Sell, inasmuch as the appellant had not paid the balance sale consideration after the respondents had obtained, and intimated, to the appellant the proof of having obtained all necessary permissions and even having cleared the pending dues with respect to the property on April 02, 1990.

13. On the pleadings of the parties, vide order dated August 21, 1997, four issues were settled and thereafter vide order dated April 19, 2004, three more issues were settled. The seven issues read as under:-

1. Whether the suit is barred by time?
2. Whether the suit is barred under Order 2 Rule 2 of the Code of Civil Procedure as contended in paragraph 2 of the Written Statement?
3. Whether the plaintiff is entitled to relief of specific performance and for recovery of the amount as stated in the plaint?
4. Relief.
5. Whether the suit is instituted by a duly authorized person? OPP.
6. Whether the plaintiff was and is always ready as well as willing to perform its part of the agreement for sale dated 2.8.88 at the relevant time(s)? OPP.
7. Whether the plaintiff is entitled to damages as a relief in the alternative? OPP.

14. In view of Ex.D-1 to Ex.D-7, to which we have made a brief reference hereinabove, the learned Single Judge has returned a finding that the respondents had proved having been in a position to execute the sale deed, and with reference to Ex.D-8 i.e. the

letter dated February 12, 1992, written by the respondents to the appellant, the learned Single Judge has held that the right to sue accrued on said date. The suit being filed on March 30, 1995, has been held to be barred by limitation.

15. With respect to the same evidence, on the issue of the appellant being ready and willing to perform its obligation under the agreement to sell, the obvious conclusion reached is that the evidence establishes that the appellant was not ready and willing to perform its part of the agreement to sell, in that, was not ready to pay the balance sale consideration.

16. Thus, the learned Single Judge has held that the appellant was not entitled to the relief of specific performance. As regards the earnest money in sum of ₹42 lakhs, the learned Single Judge has held that the appellant was not even entitled to a refund thereof since the suit was filed beyond limitation.

17. The issue pertaining to the authorization of the person to institute the suit has been decided in favour of the appellant.

18. It needs to be noted by us that probably fearing dispossession by the builders, one Ms.Vimal Kapoor and her children who were tenants in a portion of the annexe of the building filed a suit for injunction on the Original Side of this Court which was registered as Suit No.987/1989 in which, vide order dated April 10, 1989 a sweeping ex-parte injunction was granted restraining the respondents from even entering into an agreement to sell the portion of the property under the tenancy of Ms.Vimal Kapoor and her children and unfortunately the injunction continued till when the appellant filed a suit seeking specific

performance of the agreement to sell.

19. Challenging the finding returned by the learned Single Judge of the suit being barred by limitation, Sh.C.P.Vig, learned counsel for the appellant contends that in view of the injunction obtained by Ms.Vimal Kapoor and her children on April 10, 1989, the respondents came under a legal disability to execute a sale deed in favour of the appellant; and since the injunction continued to operate till when the appellant filed the suit it cannot be said that limitation commenced against the appellant.

20. The injunction related only to an insignificant fraction of the subject property which was agreed to be sold by the respondents to the appellant. That apart, the argument ignores the fact that the appellant did file the suit in question notwithstanding the injunction subsisting. Further, the injunction restrained the respondents to enter into an agreement to sell the portion of the property under the tenancy of Ms.Vimal Kapoor and her children, by which date i.e. the date when the injunction was granted, the agreement to sell, Ex.PW-1/2 had already been executed on August 02, 1988 and thus the injunction was incapable of clouding the right of the respondents.

21. Suffice would it be to state that on February 12, 1992, vide Ex.D-8 the respondents cancelled the agreement to sell and intimated appellant that they were forfeiting the earnest money received by them. The right of the appellant came under a cloud when said communication was sent and thus right to sue accrued on said date. The use of the words '*right to sue*' as synonymous with the words '*cause of action*' would be correct only when one

uses the word '*arises*' or the word '*accrues*' with it. Thus, when a fact is born which give rise to an enforceable claim, i.e. the right is infringed, it can be said that the cause of action accrues. This right i.e. the right to sue accrues when a right asserted by a party is either infringed or there is a clear and unequivocal threat to infringe the right. The origin of a right is not contemporaneous with the right to sue. Thus, the suit which was filed on March 30, 1995 was clearly barred by limitation.

22. That apart, from the documentary evidence noted by us in paragraphs 7 to 10 above it is clear that the respondents had obtained all necessary permissions and sanctions to sell the property and it was the appellant who in spite of being called upon to pay the balance sale consideration and get executed the sale deed in question did not come forward to tender the balance sale consideration and thus it can safely be said, a finding returned by the learned Single Judge, that the appellant was not ready and willing to perform its obligation under the agreement to sell.

23. We therefore need not decide the effect of the suit being filed after six years and eight months after the agreement of sell being executed and the rise in the prices of property thereby making it inequitable to enforce the bargain against the respondents. It is settled law that right to obtain a decree for specific performance pertaining to an agreement to sell immovable property is not an absolute right and even where the purchaser is able to establish all the ingredients of the right, relief can be denied if it is iniquitous to grant the relief.

24. Regretfully noting that the appellant has failed to avail the

benefit of a very fair offer made by the respondents as noted in para 1 above, probably for the reason the appellant intends to avail the remedy before the Supreme Court; and the offer made by the respondents is intended to bring a quietus to the dispute and hence the condition for the offer, we dismiss the appeal leaving the parties to bear their own costs in the appeal.

25. Noting that as a condition to restrain the respondents from selling the subject property during pendency of the appeal, as per order dated March 18, 2010 the appellant deposited ₹3.08 crores in this Court i.e. the balance sale consideration, we direct that said deposit together with interest accrued thereon be refunded to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

APRIL 17, 2012
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