

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

% *Date of Judgment: 14.02.2012*

+ **CM(M) No.557/2008**

DALMIA CEMENT (BHARAT) LTD. Petitioner

Through: Mr. D.K. Malhotra, Advocate.

versus

HANSALYA PROPERTIES LTD. & ANR. Respondents

Through: Mr. H.L. Tiku, Sr. Advocate with
Ms. Yashmeet, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. The order impugned before this court is the order dated 09.04.2008 vide which on a preliminary issue taken up by the Trial Court, the plaintiff had been directed to pay up the ad-valorem court fee on the amount of sale consideration of Rs.24,32,950/-. Plaintiff/petitioner is aggrieved by this finding.

2. Record shows that the present petitioner had filed a suit for perpetual, mandatory injunction and damages. Plaintiff is a company registered under the Companies Act; defendant No. 1 is a partnership firm comprising of defendant Nos. 2 to 4. In 1970, the father of the

defendant No. 2 holding himself out as the owner of property bearing No. 15, Barakhamba Road, New Delhi and in his capacity as a partner of Hansalaya Properties Ltd. had made a multi storied building on the aforenoted premises comprising of floors/flats; undertaking was that each flat would consist of individual flats and purchase would be on ownership basis carrying all rights which are necessary for a complete and proper utilization and enjoyment of the said floors/flats. Negotiations between the plaintiff and the defendants ensued; letter dated 30.09.1970 as also another communication dated 01.10.1970 was exchanged between the parties. Pursuant thereto, the plaintiff had acquired rights of 11th and 12th floor of the said building; these rights had been purchased by the plaintiff. Other communications as noted in the plaint were also exchanged between the parties. Possession of the aforenoted flats was given to the plaintiff on 01.04.1977 and thereafter the parking area sold to the plaintiff was also handed over to the plaintiff-Company on 01.04.1978. Contention in the plaint is that the possession of the two floors was handed over to the plaintiff on 01.04.1977 and not on 31.03.1973 which was the stipulated date.

Further contention in the plaint is that in spite of the entire sale

consideration having been paid by the plaintiff to the defendant, in fact an excess amount had been paid, sale deed has not been executed by the defendant in favour of the plaintiff. Cause of action has been detailed in para 22 and the valuation of the suit for the purposes of court fee and jurisdiction is detailed in para 23 which reads as follows:-

“23. That the value of the suit for the purposes of court fees is detailed below:-

i) For damages as claimed in prayer d). Rs. 394.00

*ii) For injunction as prayed in prayer (a), as Rs. 20.00
it is not subject to any valuation under
Article 17 Schedule II of the Court Fees Act,
valued at Rs. 200/-*

*iii) For injunction as prayed in prayer b) Rs. 13.00
value at Rs. 130/-.*

*iv) For injunction as prayed in prayer c)
valued at Rs. 130/-.*

Rs.13.00
Rs. 440.00

That the value of the suit for the purposes of jurisdiction exceeds Rs.1,00,000/- and hence the Hon'ble Court has the pecuniary jurisdiction to try and entertain this suit.”

3. The prayers made in the plaint are as follows:-

“In the premises it is, therefore, respectfully prayed that this Hon'ble court be pleased: _

a) to pass a decree of mandatory injunction or such other appropriate orders/directions in favour of the plaintiff company against

the defendants directed them to execute a formal deed of conveyance and register the same in respect of the complete 11th and 12th floors of the building in question and the parking area in the basement of the building which area is shaded in green in Annexure 'G', and thereby perfect the title of the plaintiff company which deed of conveyance will incorporate and include within itself the averments contained in para 17 in the plaint;

b) To pass/grant a decree in favour of the plaintiff company against the defendants in the nature of perpetual/prohibitory injunction or any other injunction, in the nature, facts and circumstances of the present case, directing the defendant of the present case, directing the defendants not to create or attempt to create any disturbance or threat to the peaceful enjoyment of the aforesaid complete 11th and 12th floors and parking area in the basement which are shaded in green in Annexure 'C' and the pass/make any other orders/directions/reliefs which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;

c) to grant a decree of mandatory injunction in favour of the plaintiff company against the defendants directing them to demolish the obstructions, barricades on the portion of the Eastern side of the building (the side facing the Tolstoy Marg);

d) To pass a decree for a sum of Rs. 3,000/- as nominal damages as prayed for in para 18 of the plaint;

e) to award the cost of the present proceedings and proceedings incidental thereto in favour of the plaintiff company against the defendants; and

f) and to pass such other orders and/or directions which in the fact and circumstances of the case may deem fit and proper to this Hon'ble Court."

4. Prayer 'a' is relevant for the controversy between the parties.
5. In the written statement an objection had been raised by the defendant about the maintainability of the suit in the present form; contention of the defendant was that the ad-valorem court fee is liable to be paid by the plaintiff and not a fixed court fee. A preliminary issued had accordingly been framed on 29.01.2008 which reads as under:-

"2. Whether the suit has been property valued for the purpose of court fee and jurisdiction? OPP

6. The impugned order has returned a finding that ad-valorem court fee is liable to paid by the plaintiff as the averments made in the plaint in fact discloses that the plaintiff is seeking a relief of specific performance which has been couched a relief for mandatory injunction yet this is not so.

7. Petitioner is aggrieved by this finding. This grievance of the petitioner appears to be well founded. There is no dispute to the proposition that while dealing with this question i.e. whether the suit has been properly valued for the purposes of court fee and jurisdiction is a question which has to be considered in the light of the allegations which are made in the plaint and its decision cannot be influenced either

by the pleas in the written statement or by the final decision of the suit on its merits. It is only the material allegations in the plaint which have to be construed and taken as a whole. There is no dispute to this proposition.

8. A wholesome reading of the plaint negatives the findings returned by the Trial Court. The averments as disclosed in the plaint clearly show that pursuant to negotiations and discussions and exchange of letters between the plaintiff and the defendant which had taken place including the communications dated 30.09.1970 and 01.10.1970 and thereafter, the plaintiff having paid the complete purchased money was handed over possession of these premises i.e. the 11th and 12th floor in April 1977; his grievance was that the stipulated date was 31.03.1973 but the premises had been handed over to him only on 01.04.1977 in spite of the fact that complete payment had been made by him and only the formality of the execution of the sale deed had remained; the sale deed had till the filing of the suit not been executed by the defendant. Accordingly relief of mandatory injunction directing the defendant to execute the sale deed as also damages for not handing over the disputed premises in time to the plaintiff has been made. There is no quarrel on

the relief for injunction prayed for the plaintiff.

9. This wholesome reading of the plaint clearly shows that what the plaintiff had sought was not a relief of specific performance but it was a direction to the defendant to execute the formality of the sale deed which he had not cared to do in spite of his obligation under Section 55(1)(d) of the Transfer of Property Act. It is not in dispute that the defendant had received the entire purchase money; and had also handed over possession of the flats to the plaintiff; Admittedly, the plaintiffs were in possession of the suit property at the time when the suit was filed. In these circumstances, the court fee appended to the plaint which was as per the valuation made by the plaintiff suffers from no infirmity.

10. There is also no quarrel to the proposition that the value for the purposes of court fee and jurisdiction is based on the substance which is contained in the plaint; the mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief which is asked for. The substance of the relief which is sought for in the present case is clearly to the effect that the formality of the sale deed be executed by the defendant in favour of the plaintiff in view of the admitted position that complete purchase money has been made

by the plaintiff to the defendant and he had also been handed over possession of the suit premises; in spite of this as also in view of the provisions of Section 55(d) of the Transfer of Property Act the said formality has not been completed.

11. In this factual scenario, the impugned order holding that what the plaintiff was seeking was the relief of specific performance is an illegality; this finding is liable to be reversed; it is accordingly set aside.

12. Reliance placed upon by the petitioner that the on the judgment on the Full Bench of this Court titled as *Jugal Kishore vs. Des Raj Seth* reported in *DLT 1986 (iv) 571* is misplaced. This was a case where the plaintiff was not in possession; Court was of the view that the plaintiff is seeking a relief of possession; it was in that scenario that the plaintiff had been directed to pay ad-valorem court fee. This judgment is wholly inapplicable.

13. Petition is allowed and disposed of accordingly.

14. LCR be returned.

INDERMEET KAUR, J

FEBRUARY 14, 2012

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