

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

+ **IA No. 15597/2011 (u/O 7 R 11 r/w Sec. 151 CPC) in CS(OS) 1801/2011**

Reserved on 26th April, 2012

Decided on 24th May, 2012

GANPATI INFRABUILD PVT. LTD. Plaintiff
Through: Mr. M.K. Gahlaut, Proxy
Counsel for Mr. Sachin
Mishra, Adv.
versus

SUDARSHANA DUGGAL & ANR. Defendants
Through: Mr. Rajeev K. Virmani, Sr.
Adv. with Mr. Ashish
Kothari, Advs.

Coram:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.

1. By this application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short hereinafter referred to as the "Code"), defendants have prayed for rejection of the plaint. It is alleged that suit does not disclose any cause of action, thus, plaint is liable to be rejected.

2. There is no gainsaying that the Court can exercise power, as envisaged under Order 7 Rule 11 of the Code at any stage of the proceedings. For the purpose of disposal of an application under the said provision, Court has to only consider the averments made

in the plaint coupled with the documents on record. Plaint has to be read as a whole and not in piece meal. Defence of the defendant has not to be considered. Pleas taken in the written statement would be wholly irrelevant, inasmuch as, averments made in the application. Only a part of the plaint cannot be rejected and if no cause of action is disclosed the plaint, as a whole, has to be rejected. Real object of Order 7 Rule 11 of the Code is to keep the Courts out of irresponsible law suit. In **Saleem Bhai vs. State of Maharashtra (2003) 1 SCC 557**, Apex Court has held that with reference to Order 7 Rule 11 of the Code relevant facts which need to be looked into for deciding an application thereunder are the averments made in the plaint. The Trial Court can exercise the power at any stage of the suit. Such a power can be exercised even before registering the plaint. Court can reject the plaint under Order 7 Rule 11 of the Code after issuing summons to the defendant at any time before conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of the Order 7 Rule 11 of the Code, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. In **I.T.C. Limited versus Debts Recovery Appellate Tribunal & Others (1998) 2 SCC 70**, Supreme Court held that

under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code. In **Roop Lal Sathi versus Nachhattar Singh AIR 1982 SC 1559**, Supreme Court held that only a part of plaint cannot be rejected and if no cause of action is disclosed the plaint as a whole must be rejected. In **M/s. Raptakos Brett & Co. Ltd. Vs. Ganesh Property 1998(7) SCC184**, Supreme Court observed that the averments in the plaint as a whole have to be seen to find out whether Order 7 Rule 11 of the Code was applicable.

3. In **T. Arivandandam versus T.V. Satyapal & Another (1977) 4 SCC 467**, Supreme Court held that if on a meaningful reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the court should nip in the bud the litigation by rejecting the plaint under Order 7 Rule 11 of the Code. By following the above judgment, a Single Judge of this Court in **J.D.Jain and Ors. Vs. Sharma Associates and Ors. 167 (2010) DLT 766** has held that the court should always be vigilant in scrutinizing the pleading and material placed before it to ascertain whether the litigation is frivolous or maintainable at all. In my view, in case the court comes to a conclusion that the suit is

frivolous, vexatious and meritless same has to be nipped in the bud instead of going for a complete circle of trial.

4. In the backdrop of the above settled legal position, in this case, it has to be seen as to whether the plaint discloses any cause of action for filing the present suit.

5. Plaintiff has filed this suit for specific performance of the “bayana-cum-agreement receipt” dated 13th March, 2011 in respect of the property bearing no. A-8/15, Vasant Vihar, New Delhi. Plaintiff has also prayed for a decree of permanent injunction. It may be worth mentioning here that the title of the document, specific performance whereof has been sought, is ‘Receipt’ and not “bayana-cum-agreement receipt”.

6. The “receipt” reads as under :-

Receipt

I, Mrs. Sudarshna Duggal W/o Late Shri N.L. Duggal R/o A-8/15, Vasant Vihar, New Delhi-110057, have received a sum of Rs.11,00,000/- (Rupees Eleven Lacs Only), as per details given below from M/s Ganapati Infrabuild Private Limited, through its Director Shri Rajan Gupta having its Registered Office at B-4/10 (Third Floor), Vasant Vihar, New Delhi, as advance consideration in respect of collaboration of my house no. A-8/15, Vasant Vihar, New Delhi - 110057, measuring 258 Sq. Yds. The total non-refundable is fixed Rs.1,15,00,000/- (Rupees One

Crore Fifteen Lacs Only). In this I will keep Basement, Ground Floor, First Floor, Third Floor with Terrace with three Servant Quarter with common W.C. and 3/4th stilt car parking and the Builder (M/S Ganapati Infrabuild Private Limited) will keep Second Floor with one Servant Quarter with separate W.C. on terrace and 1/4th stilt car parking.

PLACE: NEW DELHI

DATED 13/03/2011

DETAILS OF PAYMENT

1. Rs.10,00,000/- (Rupees Ten Lacs) in cash
2. Rs.1,00,000/- (Rupees One lac) vide cheque No. 466240 dated 13/03/2011

Drawn on Syndicate Bank, Vasant Vihar, New Delhi

Sd/

Sd/

(ABHISHEK GUPTA) (Sudarshna Duggal)

S/o Shri Rajan Gupta

R/o A-8/15,

R/o B-4/10, T.F.

Vasant Vihar

Vasant Vihar, New

New Delhi

Delhi - 110057

Tushar Kant Panida

S/o Divakar Panida

R/o 113, Ist Floor, Vasant Village, New

Delhi - 110057

7. There is no gainsaying that specific performance of a receipt relating to an immovable property can be granted, provided it

fulfills the ingredients of an “Agreement”. A document to constitute ‘Agreement’ is required to be signed by both the parties to such a contract. One of the essential attributes of an agreement between the parties is that it should be signed by both the parties. That apart, terms of the agreement shall indicate, in no uncertain terms, the rights as well as obligations of the parties among and/or to be performed by them under the agreement. Further that the parties shall be at ad idem in respect of all the terms and conditions of the contract relating to a transaction involved in the agreement. Indubitably, nomenclature of a document makes no difference and it is from the contents thereof including the terms and conditions as envisaged therein, the nature of such a document has to be inferred.

8. In this case, a perusal of the document, that is, ‘Receipt’, specific performance whereof has been sought by the plaintiff, clearly shows that it is merely a ‘Receipt’ and does not qualify to be an “Agreement”. Agreement is silent as regard to the manner in which property was to be developed by the plaintiff as also the consequences entailing in favour of the defendant in case of breach of such terms of development of the property. Document has been signed only by the defendant and not by the plaintiff, thus, it does not bind the plaintiff for the consequential damages etc. in case of

non-performance. It has not been mentioned in the receipt as to within how much time property was to be developed and by whom and in what manner. It has also not been mentioned as to within how much time construction was to be completed, inasmuch as, who would take requisite permissions from the appropriate authorities including sanctioning of the plan. All these ingredients are missing which are pre-requisite for a collaboration agreement of such a nature. The receipt as per the plaintiff binds the defendant but on the other hand, in my view, the obligations to be performed by the plaintiff are uncertain. For all these reasons, in my view, the document is merely a receipt and not an agreement for development of the property.

9. It appears that no collaboration agreement came into existence though parties had been negotiating in this regard. Plaintiff has itself placed on record a draft Collaboration Agreement. This Collaboration Agreement appears to have been prepared by the plaintiff but was not executed by and between the parties. Draft Collaboration Agreement placed on record by the plaintiff itself clearly indicates that parties were intending to enter into a Collaboration Agreement but somehow the deal could not be matured. This fact also indicates that the 'Receipt' is a merely an

acknowledgment on the part of defendant against the amount paid by the plaintiff to defendant during the negotiations and the same cannot be termed as 'Agreement', sufficient enough to bind the parties with regard to development of the property in question. Thus, the receipt, not being an Agreement, cannot be specifically enforced and the suit is without any cause of action, inasmuch as, is frivolous and vexatious.

10. In Lalit Kumar Sabharwal versus Ved Prakash Vijn 2003 (68) DRJ 670, a Single Judge of this Court has held as under :-

7. Before coming to the scrutiny and interpretation of Exhibit P-1 to find out as to whether it is an "Agreement to Sell" or a "receipt" only, this Court must keep in mind the principles incorporated in Section 10 of the Contract Act and the judgment of the Apex Court in CIT Punjab Haryana v. Panipat Woollen and General Mills reported in AIR 197 SC 640 which lays down in no uncertain terms that in order to construe an agreement the Court has to look to the substance or the essence of it rather than to its form. It was held that no party can escape the consequences of law merely by describing an agreement in a particular form though in essence and substance it may be different transaction. In Mayawanti v. [1990]2SCR350 the Apex Court while examining the controversies between the parties, in regard to the validity and enforceability of a contract in regard to an agreement to sell, held that the jurisdiction of the Courts to order specific performance of a contract is based on the existence of a valid and

enforceable contract and the Court will not make a contract for them where the contract suffers from some defect and renders the contract invalid or un-enforceable. It was held that the stipulations and the terms of the contract should be certain and the parties must be consensus ad idem. The acceptance must be absolute and correspond with the terms of the offer. It was held that burden of showing the existence of a valid contract is on the plaintiff who has to establish a valid and binding contract between the parties. A learned Single Judge of this Court in Nanak Builders and Investors Private Limited v. Vinod Kumar and Ors. reported in AIR 1991 Del315 had categorically held that the mere heading or title of a documents cannot deprive the document of its real nature. It was held that the substance has to be seen and not the form. Therefore, the use of a word "receipt" on a document receiving earnest money towards the sale of plot of land containing all essential and basis ingredients required for an agreement to sell which was signed by both the vendor and the vendee, was held to be an agreement of sale. In another judgment of this Court in High Way Farms v. Chintaram and Ors., 85(2000)DLT355 a learned Single Judge while examining two documents titled as receipts came to the conclusion that where the parties had merely agreed to enter into an agreement and a contract was yet to come into being the receipt could not be held to constitute an agreement to sell.

8. Applying the aforesaid principles of law to the facts of the present case, this Court is to examine as to whether the document Exhibit P-1 is an "agreement to sell" as contended by the plaintiff or is merely a "receipt" which was to be followed by an agreement to sell but never came into existence. A perusal of Exhibit P-1, which is in the handwriting of the defendant himself, shows that this document is merely a

receipt for the reason that it was not signed by both the parties which is an essential attribute of an agreement between the parties. It is true that the defendant who had signed Exhibit P-1 had acknowledged part payment against the total value of the property in suit but certain essential stipulations relevant to an agreement to sell immovable property were conspicuously missing. No time frame was fixed for the execution of the sale deed not there was any stipulation as to who was to apply for permissions from the concerned authorities in regard to the sale of the property. There was no recital in regard to the consequences of default either by the so called seller or the purchaser and most important of all, there was no description of the property proposed to be sold under this document. The mere municipal number of the property was not enough for the reason that the defendant was only a co-owner of the 50% share in the suit property. It was not clarified as to what was the portion in his possession and what was the portion he proposed to sell to the plaintiff. Another important aspect is that this document was not all signed by the plaintiff and as such, in case of default on his part, there was no stipulation in favor of the defendant to put some penalty upon plaintiff by way of forfeiture of the amount or claim of damages from him. It assumes further importance for the reason that no time limit was prescribed for the payment of the balance amount by the plaintiff to the defendant. The least that can be said is that agreements to sell regarding immovable properties are not drafted this way.

11. From the foregoing reasons, I am of the view that plaint is liable to be rejected. Accordingly, application is allowed and plaint

is rejected. All other pending applications are also disposed of infructuous.

A.K. PATHAK, J.

MAY 24, 2012
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