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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on : July 20,2012

+ RFA(OS) 63/2012

GANPATI INFRABUILD PVT LTD. Appellant
Represented by: Mr.A.K.Singla, Sr. Advocate
instructed by Mr.Sachin Mishra
& Ms.Neeti Suri Mishra,
Advocates

versus

SUDARSHNA DUGGAL Respondent
Represented by: None

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MANMOHAN SINGH

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PRADEEP NANDRAJOG, J (ORAL)

CM No. 12187/2012 (Exemption)

1. Allowed.

RFA(OS) 63/2012 & CM No. 12188/2012

1. There is a delay of 23 days in filing the appeal. As we understand, and as it has developed in India by judicial verdicts, the law pertaining to limitation is that, if there is a meritorious claim by a party it should not be sacrificed on the altar of the law of limitation. Courts have held that procedural laws are not the mistress but are the hand-maid of justice and that every effort should be made by Courts to try and settled issues on merit.

2. We thus proceed to consider the issues raised in the appeal, ignoring the delay in preferring the appeal, and for which we record that the suit record has been requisitioned in Court today, notwithstanding that the appeal comes up for preliminary hearing for the first time before the Division Bench.

3. The order impugned dated May 24, 2012, allows IA No. 15597/2011 filed by the respondents i.e. the defendants in the suit, instituted by the appellant. The appellant was seeking specific performance of a stated Agreement to Sell, contours whereof were to be found in a document labelled as a '*Receipt*'.

4. IA No. 15597/2011, filed under Order VII Rule 11 of the Code of Civil Procedure, has merited approval by the learned Single Judge with a finding returned that the document relied upon by the appellant does not have the features of an Agreement to Sell.

5. At the outset, we may note that in paragraph 7 of the impugned decision, the learned Single Judge has categorically held that it is not the label of a document but the contents whereof which determine the transaction between the parties. The learned Single Judge has held that a document labeled as a '*Receipt*' can be treated as an Agreement to Sell provided it has all the features of an Agreement to Sell. Therefore, we think that it would be useless for us to note various decisions which are cited by the learned senior counsel for the appellant to bring home the point that a document labeled as a '*Receipt*' may be treated and can be treated in law as an Agreement to Sell. Our reason for not noting the decisions is that the learned

Single Judge has not held that the document which is the foundation of a suit being a 'Receipt' cannot be the foundation of an action for specific performance of an Agreement to Sell.

6. Suffice would it be to state that a document signed by one party can be the foundation of a claim, on the averment that an offer in writing can be proved to be accepted by parole. Thus, it would not matter that a '*Receipt*' in question bears the signatures of only one party and not the other.

7. The learned Single Judge has noted the '*Receipt*' in question. We reproduce the same. It reads as under:-

"Receipt

I, Mrs. Sudarshna Duggal W/o Late Shri N.L.Duggal R/o A-8/15, Vasant Vihar, New Delhi-11—57, have received a sum of ₹ 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 ₹ 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. ₹10,00,000/- (Rupees Ten Lacs) in cash
2. ₹1,00,000/- (Rupees One lac) vide cheque No.466240 dated 13/03/2011

Drawn on Syndicate Bank, Vasant Vihar, New Delhi

Sd/-
(ABHISHEK GUPTA)
S/o Shri Rajan Gupta
R/o B-4/10, T.F.
Vasant Vihar, New
Delhi-110057"

Sd/-
(Sudarshna Duggal)
R/o A-8/15,
Vasant Vihar,
New Delhi

8. The foundation of the suit was the '*Receipt*'. The cause of action was founded on the receipt. As per the appellant, who was the plaintiff, it was stated that the plaintiff and Mrs.Sudarshna Duggal, who had executed the receipt, had entered into a collaboration agreement, terms whereof were to be found in the '*Receipt*'. It was pleaded that as per the agreement between the parties, the plaintiff was to reconstruct the building on plot bearing No. A-8/15, Vasant Vihar, New Delhi and that upon reconstruction the second floor and one servant quarter with 1/4th stilt car parking was to be the property of the plaintiff and the remaining three floors as also the basement and three servant quarters was to be the property of Mrs.Sudarshna Duggal. Additionally, the plaintiff had to pay a non-refundable sum of ₹1,15,00,000/- to Mrs.Sudarshna Duggal, out of which, two sums mentioned in the '*Receipt*' were paid to her.

9. Suffice would it be to state that as pleaded in the plaint, and as per the Agreement i.e. the '*Receipt*', it is a case where the plaintiff had to act as a builder and after demolishing the existing construction the plaintiff had to reconstruct the same. Upon reconstruction, the second floor with one servant quarter with 1/4th stilt car parking had to be the property of the plaintiff. The obligation of the plaintiff would obviously, be to

attain municipal sanction and effect construction of a building consisting of a basement, parking for cars, a ground floor, a first floor, a second floor, a third floor and servant quarters.

10. How much was to be the built up area? The '*Receipt*' mentions none. In what manner was the FAR of the building to be utilized? The '*Receipt*' mentions none. What was to be the class of construction? The '*Receipt*' mentions none. What would be the areas of various rooms i.e. whether it was a two bedrooms floor, whether three bedrooms floor and whether each bedroom was to have attached toilets etc. etc.; nothing finds mention in the '*Receipt*'. What was the time within which the construction had to be completed? Nothing has been stated in the Agreement. These are the deficiencies which have been found by the learned Single Judge to opine that the unwritten part in the receipt renders the same as inchoate document with the result that the '*Receipt*' in question does not attain the status of a collaboration document and even an Agreement to Sell as envisaged by law.

11. We concur with the view taken by the learned Single Judge and would additionally give one more reason. The Agreement envisages the construction of a new building on the plot. Executory contracts i.e. contracts to construct buildings require constant supervision by the Court are which always treated as contracts which are incapable of being specifically enforced for the reason they require constant supervision by a Court and damages are the remedy.

11. With respect to the money which appellant has parted with under the document which is incapable of being enforced, the appellant is free to avail such remedy as is available.

12. The appeal is accordingly, dismissed in limine, and therefore, all pending applications stand disposed of as infructuous.

12. No costs.

PRADEEP NANDRAJOG, J

MANMOHAN SINGH, J

JULY 20, 2012
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