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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on : May 17, 2012
Judgment Pronounced on: May 21, 2012

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RFA(OS) 20/2012

SANJAY SHARMA & ORS. Appellants
Represented by: Mr.Sandeep Sharma and Mr.Vikas
Sharma, Advocates.

versus

SENTINAL CONSTRUCTION PVT. LTD. Respondent
Represented by: Mr.Suresh Singh, Advocate for R-1.

CORAM:

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

PRADEEP NANDRAJOG, J.

1. As recorded in Ex.PW-1/10, which we note is a document embodying two agreements, respondent No.2 Sudhir Malhotra, the owner of property bearing Municipal No.A-249, Defence Colony, New Delhi and M/s Buildmore India Ltd., respondent No.3 agreed that respondent No.3 would construct a building on the plot, inter-alia, having a basement which upon construction was to be sold to respondent No.1 M/s Sentinal Consultants Pvt. Ltd. for a sale consideration of ₹12.25 lakhs by Sudhir Malhotra. Thus, Ex.PW-1/10 was a construction agreement as regards respondent No.2 and respondent No.3 and was an agreement to sell as regards respondent No.1 and respondent No.2.

2. Alleging having paid ₹10.25 lakhs to respondent No.2, respondent No.1 filed a suit seeking specific performance of Ex.PW-1/10 in so far it required respondent No.2 to sell the basement of the building to it and pleaded in the plaint that it was always ready and willing to pay the balance sale consideration in sum of ₹2 lakhs.

3. Along with the plaint, an application was filed seeking interim injunction to restrain respondent No.2 from selling, transferring, alienating, parting with possession or creating any third party right or interest in the basement pending disposal of the suit.

4. Vide ex-parte ad-interim order dated August 03, 1998, while issuing summons in the suit, in I.A.No.6314/1998 respondent No.2 was directed to maintain status quo with respect to the basement.

5. Upon being served with summons in the suit, respondent No.2 appeared through counsel and made a statement through counsel, but after filing the written statement, as recorded in the order dated September 17, 2001, that the matter was settled between the parties. The next order dated March 06, 2002 records that settlement talks had failed. However, the very next order dated August 02, 2002 that the parties i.e. respondents No. 1 and 2 were trying to enter into a settlement. Matter lingered on and ultimately May 17, 2004, issues were settled on the rival pleadings of respondents No. 1 and 2.

6. Counsel stopped appearing for respondent No.2. The appellants thereafter sought impleadment, and was allowed to

be impleaded as defendants for the reason they claimed that in March 14, 2002, respondent No.2 had let out a portion of the basement ad-measuring 340 sq. ft. to the appellants for a period of three years and before the lease expired, vide sale-deed Ex.CW-2/PX-1 sold the basement area ad-measuring 450 sq. ft. to the appellants for a consideration of ₹1 lakh.

7. When said fact was brought to the notice of the Court, since the act of firstly parting with possession when the alleged lease was executed and secondly when the sale-deed Ex.CW-2/PX-1 was executed on January 28, 2003 violated the injunction granted on March 03, 1998 i.e. the order requiring status quo to be maintained, respondent No.1 filed I.A. No.5530/2004 invoking the contempt jurisdiction of this Court to take action against not only respondent No.2 but even against the appellants.

8. Evidence was led and respondent No.1 successfully established due execution of Ex.PW-1/10 and it having paid ₹10.25 lakhs to respondent No.2 and being ready and willing to pay the balance sale consideration in sum of ₹2 lakhs.

9. Deciding the suit and I.A. No.5530/2004, vide impugned judgment and decree dated October 21, 2011 the learned Single Judge has decreed the suit seeking specific performance of Ex.PW-1/10 filed by respondent No.1 against respondent No.2, and qua the appellants has held that there was no evidence of the appellants having knowledge of the injunction order dated August 03, 1998, and thus would not be liable for abetting violation of said order by respondent No.2, but has held that the appellants would be required to hand over possession of said portion of the basement to which they

acquired title under Ex.CW-2/PX-1 since the sale was in violation of the order dated August 03, 1998.

10. In a nutshell, qua the appellants, the doctrine of lis pendense has been invoked.

11. Decreeing specific performance of Ex.PW-1/10, the learned Single Judge has directed respondent No.1 to deposit ₹2 lakhs with the Registrar General of this Court within two weeks, notwithstanding the learned Single Judge having granted damages in sum of ₹25 lakhs to respondent No.1 against respondent No.2.

12. Record of the suit would reveal that respondent No.1 has deposited ₹2 lakhs vide cheque No.520516 and upon encashment thereof the amount has been kept in a fixed deposit.

13. We note that respondent No.2 has vanished from the scene and has not effectively contested the suit filed by respondent No.1. It has not challenged the impugned decree against it.

14. The grievance of the appellant relates to the directions in the impugned decree requiring possession of 450 sq. ft. basement area to be handed over by them to respondent No.1.

15. With reference to the law declared by the Supreme Court in the decision reported as AIR 1967 SC 1386, Moolraj vs. Morti Raghonathji Maharaj, the learned Single Judge has held that a sale executed in violation of an injunction order is void ab-

initio and non-est and as a consequence held that the sale-deed Ex.CW-2/PX-1 need not be cancelled.

16. It was urged by learned counsel for the appellants that the finding returned by the learned Single Judge of the appellants having no knowledge of the injunction order dated August 03, 1998 would obviously make them acquired the status of bona fide purchasers for valuable consideration of the basement without notice and thus their title cannot be negated. It was further urged that a sale-deed executed in violation of the Court injunction order or during the pendency of the suit was not a void document as held by the learned Single Judge.

17. Section 52 of the Transfer of Property Act, 1882 reads as under:-

“Transfer of property pending suit relating thereto – During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government... of any suit or proceeding which is not collusive and in which any right of immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

Explanation – For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceedings in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction

or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

18. The section is a legislative recognition of the Latin maxim '*Ut lite pendente nihil innovetur*'.

19. The principle on which the doctrine of lis pendens rests can be traced to the decision reported as (1857) 1 De G & J 556 Bellamy vs. Sabine. Turner, LJ said : *It is, as I think, a doctrine common to the Courts both of Law and Equity, and rests, as I apprehend, upon this foundation – that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations pendente lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant's alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceeding.*

20. In a concurring opinion, Lord Cranworth explained that the doctrine does not rest on the ground of notice of lack thereof. He said : *It is scarcely correct to speak of lis pendens as affecting a purchaser through the doctrine of notice, though undoubtedly the language of the courts often so describes its operation. It affects him not because it amounts to notice, but because the law does not allow litigant parties to give to others, pending the litigation, rights to the property in dispute, so as to prejudice the opposite party.*

21. Commentaries on the Transfer of Property Act, 1882 would reveal that Courts in India have consistently followed

the law declared in Bellamy's case (supra). Thus, it can safely be said that the rule contained in Section 52 of the Transfer of Property Act, 1882 is not based on the doctrine of notice, but on the doctrine of expediency i.e. the necessity for final adjudication and it is thus immaterial whether the alienee pendente lite had, or had not, notice of the pending proceedings.

22. It may be true that Section 52 creates only a right to be enforced to avoid a transfer made pendente lite, because such transfers are not void, but voidable – and that too, at the option of the affected party to the proceedings, pending which, the transfer is effected, but this would not mean that the aggrieved party has to litigate for a second time with the alienee.

23. As explained by the Supreme Court in the decision reported as AIR 1973 SC 2537 Rajendar Singh vs. Santa Singh, lis pendens is intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a Court in which the dispute on rights or interests in immovable property is pending, by private dealings that may remove the subject matter of litigation from the ambit of the power of the Court to decide a pending dispute or which may frustrate its decree.

24. Thus, whether or not the sale being in contravention of the injunction order passed by this Court or whether or not the appellants have notice thereof, or the suit, is irrelevant.

25. Learned counsel for the appellants had relied upon a decision passed by a learned Single Judge of this Court reported as 156 (2009) DLT 475 A.K.Chatterjee vs. Ashok

Kumar Chatterjee to urge that as per said decision, the learned Single Judge has incorrectly held the sale in favour of the appellants to be void.

26. We have already held above that sales pendente lite of properties which are subject matter of the suit are not void but are voidable and thus nothing turns on the said decision, but it would be of no help to the appellants since such sales are voidable at the option of the plaintiff of the suit.

27. Upholding the view taken by the learned Single Judge we dismiss the appeal but direct that the balance sale consideration deposited by respondent No.1 in sum of ₹2,00,000/- (Rupees Two lakhs) would be paid over to the appellants together with the interest which has accrued thereon after sale deed is executed in favour of respondent No.1 and the time to hand over possession of the basement arrives. We are so directing because it is respondent No.2 who has defrauded the appellants by selling part of the basement to them knowing fully well that a suit seeking specific performance of the agreement Ex.PW-1/10 to which it was a signatory was pending.

28. There shall be no order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

MAY 21, 2012
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