

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

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Date of decision: 4th July, 2013

+ CS(OS) 491/2010, I.A. Nos.3459/2010, 3460/2010 & 3461/2010 (all u/O 39 R-1 & 2 CPC) & I.A. No.8014/2012 (of defendant no.3 u/O 7 R-11 r/w O-1 R-10 CPC).

ABHEY DEWAN & ORS

..... Plaintiffs

Through: Mr. R.K. Sinha and Mr. Ganesh Kumar, Advocates.

Versus

MANOJ SETHI & ORS

..... Defendants

Through: Mr. Vipul Srivastav, Adv. for D-1&2
Mr. Yogesh Swaroop, Adv. for D-3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The three plaintiffs have instituted this suit for cancellation of documents, recovery and damages of Rs.25 lacs and permanent injunction, pleading:-

- (a). that the plaintiff no.3 Shri Gobind Dewan is the father of the plaintiff no.1 and father-in-law of the plaintiff no.2 Mrs. Mahima Dewan;
- (b). that the defendant no.1 Shri Manoj Sethi had approached the plaintiff no.1 on 24th October, 2005 for sale to the plaintiff no.1 of plot ad-measuring 32 sq. mtrs. bearing No.C-2/299, Sector-32, Rohini, Delhi – 110 085 for a total sale consideration of

Rs.13,15,000/- and earnest money/*bayana* receipt dated 24th October, 2005 was executed and the plaintiff no.1 paid a sum of Rs.4 lacs thereunder as earnest money/*bayana* to the defendant no.1; however inspite of the plaintiff no.1 being ready and willing, the defendant no.1 did not fulfill his obligations under the earnest money receipt / *bayana*;

- (c). that the defendant no.1 also took huge amount of approximately Rs.12 lacs from the plaintiff no.1 under another two Agreements-cum-*Bayana Rasid* for two other plots but failed to convey the same also to the plaintiff no.1;
- (d). that subsequently the plaintiff no.1 realized that the defendant no.1 had cheated and defrauded the plaintiffs on the pretext of selling the aforesaid properties to the plaintiffs when he had no right to sell the same;
- (e). that the defendant no.1 however threatened the plaintiff no.1 of dire consequences if plaintiff no.1 raised any alarm;
- (f). that the plaintiff no.1 sent two legal notices dated 18th March, 2008 to the defendant no.1 in this regard but which the defendant no.1 failed to receive;

- (g). that thereafter on 29th April, 2008 the defendant no.1 represented to the plaintiff no.1 that he will get the plaintiff no.1 compensated for the losses so suffered by the plaintiff no.1 by betting in cricket matches;
- (h). that the plaintiff no.1 trusting the defendant no.1 kept on playing / betting in such games as was advised by the defendant no.1 and then came to know that the defendant no.1 is a bookie;
- (i). that though initially the defendant no.1 told the plaintiff no.1 that he was winning a lot and also paid few thousands to the plaintiff no.1 but subsequently informed that the plaintiff no.1 was on a losing streak and asked the plaintiff no.1 to give some more money;
- (j). that the plaintiff no.1 gave one blank cheque of his wife, plaintiff no.2 to the defendant no.1;
- (k). that thereafter the defendant no.1 kept on insisting and threatening the plaintiff no.1 to give some valuables as there was no amount in the bank account of the plaintiff no.2;

- (l). that the plaintiff no.1 being hypnotized and pressurized and threatened by the defendant no.1, gave jewelries of the plaintiff no.2 and his mother to the defendant no.1;
- (m). that the plaintiff no.1 was also made to execute documents of one property/shop in the name of the plaintiff no.1 in favour of defendant no.2 who is the brother-in-law of the defendant no.1, without receiving any consideration therefor;
- (n). that the defendant no.1 misused the blank cheque drawn on the account of the plaintiff no.2 by filling in a sum of Rs.5 lacs therein in favour of defendant no.3 Mr. Lakshmi Kant Bamola, whom the plaintiffs do not even know;
- (o). it was at that stage that the plaintiff no.1 informed of all the aforesaid to his father plaintiff no.3;
- (p). that the plaintiff no.1 then sent a complaint dated 25th May, 2008 to the Police but no action was taken thereon;
- (q). that the defendant no.1 has thus committed criminal breach of trust, cheating and fraud on the plaintiffs and has caused loss of around Rs.25 lacs to the plaintiffs as the cost of the plot has gone much higher;

- (r). that though the plaintiffs are entitled to take legal possession of property No.C-2/2999, Sector32, Rohini, Delhi – 110 085 but have learnt that the said property has also changed hands and hence in the alternative the plaintiffs are entitled to recover from the defendant no.1 the sum of Rs.25 lacs being the loss due to failure of the defendant to fulfill his obligations and for cheating.

The plaintiff has thus sued, (i) for cancellation of the documents admittedly executed by the plaintiff no.1 in favour of the defendant no.2 Shri Ashok Grover with respect to Shop No.A-2/137, Ground Floor, Sector-3, Rohini, Delhi and registered with the Office of the Sub Registrar, VI-A, Pitampura, Delhi as document no.2877, in additional book No.I, Volume No.2833 at pages 1-7 on 09/04/09; (ii) for recovery of Rs.25 lacs from the defendant no.1; and, (iii) for permanent injunction restraining the defendants from transferring, selling, alienating or disposing of respective properties.

2. Summons of the suit were issued though interim relief sought not granted. The defendant no.1 and the defendant no.2 have filed their written statements. The defendant no.3 has filed IA No.8014/2012 under Order 7 Rule 11 of the CPC pleading that no cause of action against the defendant

no.3 is disclosed in the plaint and no relief also against the defendant no.3 is claimed in the suit and bald allegations against defendant no.3 have been made to create a false defense in a complaint filed by the defendant no.3 against the plaintiff no.2 in the Courts at Dehradun, Uttarakhand of offences under Section 138 of the Negotiable Instruments Act, 1881.

3. The plaintiffs have filed a joint replication to the separate written statements of the defendants no.1&2.

4. The suit was listed on 8th May, 2013 for framing of issues and hearing on the applications for interim relief and under Order 7 Rule 11 of the CPC supra, when the counsel for the plaintiffs chose not to appear; however attempt was made to read the plaint to proceed further with the matter but it was felt that there was no clarity whatsoever in the plaint which appeared to have been drafted merely by lifting some paragraphs from the complaint/FIR which perhaps had been lodged at the behest of the plaintiffs. An opportunity was however given to the counsel for the plaintiffs to appear and satisfy this Court of the case sought to be agitated.

5. The counsel for the plaintiffs has been heard on the application of the defendant no.3 under Order 7 Rule 11 of the CPC as well as on the maintainability of the suit.

6. The plaintiffs along with the plaint have *inter alia* filed:-

- (i). earnest money receipt dated 24th October, 2005 of Rs.4 lacs but which on the face of it does not disclose the particulars of the executants except that it appears to have been executed “for Classic Associates”. The signatures on the said receipt do not resemble the signatures of the defendant no.1 on the written statement filed;
- (ii). photocopy of a Sale Deed dated 24th March, 2009 executed by the plaintiff no.1 in favour of the defendant no.2 of a portion of the ground floor without roof rights of property bearing No. 137, Space No.3 area measuring 14 sq. mtrs. total area measuring 90 sq. mtrs. in Block and Pocket A-2, Sector-3, situated at Rohini Residential Scheme, Rohini;
- (iii). Notice dated 7th May, 2009 of the Advocate for the defendant no.3 to the plaintiff no.2 regarding dishonor of the cheque for Rs.5 lacs.

7. The plaintiffs have not filed any documents with respect to the payments alleged of Rs.12 lacs under two other agreements-cum-*bayana rasid* for two other plots pleaded to have been executed by the defendant no.1 in favour of the plaintiffs.

8. I will first take up the application of the defendant no.3 under Order 7 Rule 11 r/w Order 1 Rule 10 of the CPC. The case of the plaintiffs is that the plaintiff no.1 had handed over the cheque qua which the defendant no.3 has issued legal notice dated 7th May, 2009 supra to the plaintiff no.2, to the defendant no.1 by way of security for betting in cricket to which the defendant no.1 had lured the plaintiff no.1 into. The plaintiffs however in the plaint have not claimed any relief with respect to the said cheque. The reliefs claimed as aforesaid are only of cancellation of documents, recovery of Rs.25 lacs from the defendant no.1 and of permanent injunction restraining the defendants from dealing with the properties. Though the plaintiffs have filed a reply to the said application of the defendant no.3 but therein also have only pleaded that there exist averments in the plaint which disclose cause of action but have not been able to plead as to what is the relief claimed against the defendant no.3.

9. Mere making of averments against or with respect to a defendant without claiming any relief against that defendant is not sufficient for allowing the plaintiff to proceed with the suit against such defendant as the Court is not to allow its time to be wasted in an empty exercise. The plaintiffs inspite of the application having been filed by the defendant no.3 pointing out that no relief has been claimed in the plaint against the defendant no.3 have chosen not to correct the mistake even if any and no relief qua the cheque in favour of the defendant no.3 has been claimed. That leaves this Court with no option but to allow the said application of the defendant no.3 under Order 7 Rule 11 of the CPC and to reject the plaint in so far as against the defendant no.3.

10. As far as the claim of the plaintiffs against the defendants no.1&2 is concerned, the claim of the plaintiffs for recovery of Rs.25 lacs from the defendant no.1 is based on the defendant no.1 having received *bayana* of Rs.4 lacs with respect to one property and Rs.12 lacs with respect to two other properties against *bayana rasid* from the plaintiff no.1. However as aforesaid, only the *bayana rasid* of Rs.4 lacs is filed and the agreement-cum-*bayana rasid* for Rs.12 lacs has not even been produced. The question which arises is, should this Court even now when the stage of filing documents,

admission/denial is over and when opportunity has already been given to the plaintiffs to satisfy this Court as to the maintainability of the suit, allow the time of this Court to be wasted when the plaintiffs inspite of admission of existence of agreement-cum- *bayana rasid* on the basis of which claim is made, have neither produced the same nor given any explanation for non-production thereof. In my opinion, no. The Court will not allow its time to be wasted for trial of suits which are bound to abort (reference in this regard may be made to *T. Arvindandam Vs. T.V. Satyapal* AIR 1997 SC 2421, *Liverpool & London S.P. and I. Association Ltd. Vs. M.V. Sea Success I* (2004) 9 SCC 512 & *ITC Ltd. Vs. Debts Recovery Appellate Tribunal* (1998) 2 SCC 70. As far as the *bayana rasid* produced of Rs.4 lacs is concerned, the same is admittedly of 24th October, 2005. No date for completion of transaction is mentioned therein. The claim for damages on account of breach thereof in this suit instituted first on 29th January, 2010 is palpably barred by time.

11. As far as the claim for recovery of Rs.25 lacs for losses caused by the defendant no.1 to the plaintiffs on betting in cricket is concerned, the said claim is barred on the principle of *in pari delicto*. This Court would not allow its process to be used in enforcement of a transaction which is steeped

in illegalities. Betting in cricket or for that matter in any sport is illegal and no claim before the Courts of law for losses suffered or made to suffer in the same, lies.

12. The principle of public policy is, *ex dolo malo non-oritur action* i.e. no court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the litigant's own stating or otherwise, the cause of action appears to arise *ex turpi causa* or in transgression of a positive law of the country, the Court will refuse to render its assistance to such a litigant. The Supreme Court in ***Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander*** AIR 1968 SC 1165 held that in a case in which a litigant must rely upon his own illegality, the Court may refuse him assistance. Similarly in ***Smt. Surasaibalini Debi Vs. Phanindra Mohan Majumdar*** AIR 1965 SC 1364 also it was held that if the litigant seeks the assistance of the Court to effectuate an illegal transaction, the Court will refuse to assist him. In ***Sita Ram Vs. Radha Bai*** AIR 1968 SC 534 it was held that the principle that the Courts will refuse to enforce an illegal agreement at the instance of a person who is himself a party to an illegality or fraud is expressed in the maxim *in pari delicto potior est conditio defendentis*. Similarly in ***Kedar Nath***

Motani Vs. Prahlad Rai AIR 1960 SC 213 it was held that where a party rests its case upon an illegality, then public policy demands that it should not be allowed to take advantage of the position. Mention in this context may also be made of ***S.P. Chengalvaraya Naidu Vs. Jagannath*** (1994) 1 SCC 1 holding that the Courts of law are meant for imparting justice between the parties; that a person whose case is based on falsehood has no right to approach the court and can be summarily thrown out at any stage of litigation. It was also noted that the process of the court is being abused - property grabbers, tax evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. I am also tempted to refer to ***Ram Sewak Vs. Ram Charan*** AIR 1982 Allahabad 177. It was a case of concealment of profits; the parties had been keeping double set of accounts for evading payment of income tax and sales tax. The Lower court reported the matter to the Taxation Authority. The High Court held that the Courts should have refused to entertain the suit on the ground of public policy, as it involved directing the recovery of an amount found to be due to either party as a share of the profits which had been deliberately concealed by the parties from the books of account in

order to evade the payment of taxes. It was held that no Court can countenance a deliberate evasion of tax laws of the country and to lend the aid of the court for recovering an amount which had been deliberately kept concealed by the parties in order to evade payment of taxes due thereon. It was further held that if the courts were to do so, it would amount to aiding and abetting evasion of the laws by the court itself. It was further held that since the object of the parties was found to be that the profits will be earned in such a way or retained in such a manner as to evade the payment of taxes which was forbidden by law and which defeats the provision of the tax laws, therefore the object of the agreement was forbidden by law and is opposed to public policy. The agreement between the parties to earn concealed profits being void, it was held that the court could not enforce the agreement by directing an inquiry into that amount or the destination of the concealed profits in order to enforce the recovery of the share therein of one party from another. Reference may also be made to the Full Bench decision in ***Ghulam Ahmed v. Mohd. Iqbal*** AIR 1970 J&K 165 where a partnership which entailed transfer of truck and its route permit to the partnership

business, in contravention of the provisions of the Motor Vehicle Act was held to be void in entirety.

13. Thus the claim for recovery of Rs.25 lacs against the defendant no.1 has no basis in law.

14. That brings me to the other relief sought by the plaintiffs, of the cancellation of the Sale Deed. The Sale Deed is admittedly a registered document. The plaintiffs admit their signatures thereon. The said Sale Deed records the same to be for a consideration of Rs.1,75,700/- paid and received in cash. I have enquired from the counsel for the plaintiffs that if suits of the present nature challenging registered documents were to be entertained and title to immovable properties transacted thereunder put under a cloud, there would no sanctity left of such transaction and no transaction would be free from challenge; people would fear entering into such transaction for the reason of the seller, inspite of the transaction, filing such suits. The pleadings as aforesaid are vague. The consideration is again steeped in illegality i.e. of security for the illegal transaction of betting in cricket. I am of the view that the Courts process cannot be allowed to be used for seeking such cancellation also.

15. In this respect it may also be mentioned that while the plaintiffs in one hand are seeking the relief of cancellation of Sale Deed but at the same time are seeking the relief of compensation of Rs.25 lacs for losses which the defendant no.1 made the plaintiffs suffer and which includes the losses owing to the execution of the said Sale Deed. For this reason also the plaintiffs are not entitled to the relief of cancellation of Sale Deed.

16. The only other relief claimed, is of perpetual injunction restraining the defendants from dealing in the properties mentioned in the plaint. As far as the properties with respect to which the three agreements-cum-*bayana rasid* are stated to have been executed, the plaintiffs in the plaint itself admit the said properties to have since changed hands; the subsequent purchasers have not been impleaded; the claim for injunction against the defendants with respect to such properties is therefore utterly misconceived. As far as the property subject matter of Sale Deed, cancellation whereof is sought is concerned, once the plaintiffs have been held to be not entitled to the relief of cancellation, the question of the plaintiffs being entitled to the relief of injunction with respect to the said property does not arise.

17. The suit thus, in so far as against the defendants no.1&2 also, is found to be not maintainable and is dismissed; however in the facts no costs.

18. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J
JULY 04, 2013/pp..