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

Reserved on: 04.07.2013

Decided on : 19.07.2013

+ CS(OS) 2039/2008

MR. SANGIT AGRAWAL Plaintiff
Through Mr.C.S.Yadav, Adv.

Versus

MRS. PRAVEEN ANAND & ANR. Defendants
Through Ms.Shobhna Takiar, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The plaintiff has filed the present Suit seeking a decree of Specific Performance of Agreement to Sell dated 28th September, 2006 and for directions to the defendant to execute all necessary documents of sale in favour of the plaintiff as per the said Agreement.

2. The brief facts of the case as set out by the plaintiff in the Plaint are that defendants approached the plaintiff, that defendant No.1 is the sole and exclusive owner of Plot No.143, Pocket-6, block 8 Sector 28 Rohini, Phase-IV, Residential Scheme, measuring 60 sq. meters and allotted by Delhi Development Authority. It is stated that defendant No.2 claimed to be the General Power of Attorney holder of defendant No.1 in respect of the abovesaid plot. On 28th September, 2006 an Agreement to Sell took place between the plaintiff and defendant No.1 whereby the defendant agreed to sell the aforesaid plot for a total consideration of Rupees 23,50,000/-. In

advance an earnest money/bayana of Rupees 4,50,000/- was also paid. The Agreement to Sell was signed by defendant No.2 on behalf of defendant No.1.

3. It is further submitted by the plaintiff that the Agreement to Sell stipulated that the transaction shall be completed within a period of three months. It is further stated that the defendants had agreed to convert the property from leasehold to freehold within three months and simultaneously the defendant would transfer the absolute rights and title of the property in favour of the plaintiff.

4. It is further submitted by the plaintiff that after execution of the Agreement to Sell, the plaintiff made innumerable queries from the defendants about the execution of the sale documents. The plaintiff claims to have informed the defendant that he had arranged the required money from his friends and relatives and is ready and willing to deliver the same to the defendant at the time of registration of the sale documents. It is stated that defendant No.2 on each occasion on the pretext that defendant No.1 has gone to Australia avoided to execute the documents. It is also stated that the defendants also informed the plaintiff that due to this reason the formalities with DDA could not be completed and that the same shall be done immediately once defendant No.1 returns from Australia. It is further stated in the Plaint that the plaintiff came to know that the defendants are negotiating with other parties. The plaintiff sent a legal notice dated 2nd April, 2008 through his Advocate calling upon the defendants to execute the sale documents. The legal notice sent to Defendant No.1 was received

unserved with the remark “no such person in part I”. It is stated that the Legal Notice sent to defendant No.2 was served. Plaintiff is also stated to have filed a complaint dated 8th August, 2008 with the Police Station Greater Kailash, New Delhi against defendant No.1. On the above averments, the plaintiff filed the present Suit seeking a decree of Specific Performance of Agreement dated 28.09.2006. The Suit was filed on 25th September, 2008.

5. Defendants No.1 and 2 have filed a common Written Statement. It is stated by them that defendant No.2 was approached by one Mr. Ravi Raj who represented that he would get the said plot in question sold and that he had a prospective buyer, namely, the plaintiff. It is further stated that said Mr.Ravi Raj got drafted and signed an Agreement to Sell which only had signatures of Defendant No.2 and that the said Mr.Ravi Raj paid an amount of Rs.4,50,000/- in advance. It is submitted by the defendant that neither defendant No.1 nor defendant No.2 have met the plaintiff in any manner whatsoever nor received any money from him. It is the contention of the defendants that defendant No.2 visited Australia from November, 2006 to 11th January, 2007. The said defendant No.2 continued to contact Mr.Ravi Raj for completing the sale, as defendant No.1 was in urgent need of funds for purchase of a house in Australia but for some reason or the other the said Mr.Ravi Raj kept postponing the matter. The defendant No.2 claimed to have remained in touch with the said Mr.Ravi Raj. It is stated that from the date of execution of the alleged Agreement to Sell till the date of filing of the present Suit, the plaintiff never contacted the defendants at any point of time. It is the contention of the defendants that they have been constantly following up the matter with Mr.Ravi Raj for completion of the transaction

and that the plaintiff at no stage has contacted the defendants in any manner whatsoever and has failed to complete the transaction. It is also stated that they even offered to the said Mr.Ravi Raj to return the amount already received in case he was not in a position to get the transaction completed.

6. In the light of the above pleadings, the following issues were framed by this Court on 19th May, 2009:-

- “1.Whether the plaintiff has been ready and willing to perform his part of the agreement to sell? OPP
- 2.Whether the discretion in the grant of the relief of specific performance is to be exercised in favour of the plaintiff? OPP
- 3.Whether the defendants had not dealt with the plaintiff and had dealt with Mr.Ravi Raj only and whether the said Mr.Ravi Raj had defaulted in any of the obligations undertaken by him and if so to what effect? OPD
- 4.Relief.”

7. ISSUE NO.1

- “1.Whether the plaintiff has been ready and willing to perform his part of the agreement to sell? OPP”

Issue No.1 is the main issue which is whether the plaintiff has been ready and willing to perform his part of the Agreement to Sell. I will deal with the said issue first.

8. There is some controversy regarding the Agreement to Sell. The defendants in their Written Statement have not accepted the validity and authenticity of the Agreement to Sell dated 28.09.2006. It is stated by the defendant that the same was got executed only from defendant No.2 and that

the plaintiff had never signed the said document in their presence. It is also stated that defendant never received any amount nor any advance/consideration from the plaintiff.

9. The above submissions of the defendants are without merits. The Agreement to Sell has been admitted by counsel for defendants No.1 and 2 and was duly exhibited as Exhibit P-1. There was no protest to the said exhibition at any subsequent stage. Even otherwise, a perusal of the said Agreement to Sell shows that the blank that is filled up by hand is the name of the defendant No.2 Shri S.K.Chopra. The name of the plaintiff Mr.Sangit Aggarwal is typed out. Further, defendant No.2 has admitted in his cross-examination that he received a sum of Rs.4.5 lacs and that the said amount was deposited in the bank account of defendant No.1 at Punjab National Bank, Greater Kailash, New Delhi. This fact was stated in the cross-examination of defendant No.2 on 28.11.2011. Defendant No.1 also has at no stage denied that defendant No.2 was not authorised on her behalf to sign the Agreement to Sell. Hence submission of the defendant on this issue are without merit. It is obvious that defendant No. 2 has signed the Agreement on behalf of defendant No. 1 and received advance that was also paid to defendant No. 1. In view of the above, it is clear that a concluded agreement took place between plaintiff and defendant No.1 for the suit property in question.

10. The question, however, remains as to whether the plaintiff was ready and willing to perform his part of the Agreement to Sell. The Plaintiff in the Plaint has claimed that after execution of the agreement and receipt of

Rs.4.5 lacs by the defendants, the defendants started avoiding the plaintiff. He further states that he informed the defendants that he had arranged the required money from his friends and relatives and is ready and willing to deliver the same but defendant No.2 on the pretext that defendant No.1 has gone to Australia avoided to execute the documents. It is also stated that formalities with DDA could not be completed by the defendant. The above averments have also been made in evidence by way of affidavit filed by PW1, the plaintiff.

11. Apart from his own Affidavit by way of evidence the plaintiff has placed on record statement of his account in the Hong Kong and Shanghai Bank Corporation, statement of Euroasia Global in Allahabad Bank and a communication dated 9th December, 2006 written by Tibson Investment Private Limited addressed to the plaintiff which purports to provide a loan of Rs.20 lacs repayable within one year on security of the Suit property. This letter was proved by PW-4 Shri Pramod Kumar Tibrewala, Finance Adviser, Tibson Investment Private Limited. The letter was marked as Ex.PW4/1. The bank statement regarding his account in the Hong Kong and Shanghai Bank Corporation Limited is filed by PW 2 and marked as Ex.PW2/1. The statement of accounts of Euro Asia Global in Allahabad Bank is filed by PW3. Plaintiff claims to be a partner of the firm Euroasia Global. On the basis of the above evidence, the plaintiff submits that he has been ready and willing to perform his part of the Agreement to Sell.

The Factum of readiness and willingness to perform the plaintiff's part of the contract is to be adjudged with regard to the conduct of the parties and attending circumstances.

12. Reference may be had to relevant portion of Section 16 of the Specific Reliefs Act which reads as follows:

“16. Personal bars to relief. – Specific performance of a contract cannot be enforced in favour of a person –
***”

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.- For the purposes of clause (c),-

- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;
- (ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

It is indisputable that in a suit for specific performance of contract, the plaintiff must establish his readiness and willingness to perform his part of the contract. The question as to whether the onus which is on the plaintiff is discharged or not will depend upon facts and circumstances of each case.

In *JP Builders v. A. Ramadas Rao, (2011) 1 SCC 429*, the Hon’ble Supreme Court interpreted the term/words “Ready and willing” in para 22. The Court has held as under:

“The words “Ready” and “Willing” imply that the person was prepared to carry out the terms of the contract. The distinction between “Readiness” and “Willingness” is that

the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance. Generally, readiness is backed by willingness.

13. I would first look into the willingness of the plaintiff to perform his part of the contract. One would normally expect that if the plaintiff is willing to carry out his part of the contract, he would at the time when the conveyance deed was to be registered and the transaction was to be finalised, unequivocally inform the defendants that he has the requisite funds to complete the transaction and other processes regarding preparation of documents, purchase of stamp papers etc, would be attempted to be completed. If for some reason, as is the case of the plaintiff that the defendant were being evasive, one would expect the plaintiff to vigorously follow up and chase the defendants at least around the period when the transaction is to be completed. The entire transaction was to be completed within three months on the date of the agreement. This is obvious from perusal of clause 2 of the agreement to sell which clearly states that the transaction will be completed within three months from the date of execution of the agreement.

14. The facts in this case show that after Agreement to Sell dated 28th September, 2006, there has been hardly any activity on the part of the plaintiff to suggest that he was ready and willing to perform his part of the contract. The first written communication addressed by the plaintiff to the defendants is the legal notice dated 2.4.2008 i.e. after nearly 18 months after the Agreement to Sell. The transaction was to be completed within three months from the date of execution of the Agreement. Yet the plaintiff

has taken 18 months to send his first communication/legal notice.

15. Apart from the absence of a written communication by the plaintiff, there is no cogent evidence led by the plaintiff to show any attempt to communicate his readiness or willingness to perform his part of the agreement. Vague and general statements have been made by the plaintiff in his affidavit by way of evidence. In paragraph 8 and 9 of his Affidavit plaintiff states as follows:-

“8. Thereafter I made innumerable inquiries with the defendants about the execution of the sale documents I have expressed my readiness to pay the balance consideration. I informed the defendants that I have arranged the required money from my friends and relatives and is ready and willing to deliver the same to them at the time of the registration of the sale documents. I arranged the required money and the same are reflected in the statement of my saving account and account of my firm. I had also arranged the finance facilities from the finance company in the event of any eventualities. However, the defendant No.2 on each occasion, on the pretext that the defendant No.1 has gone to Australia avoided executing the documents. The defendants also informed me that due to this reason, the formalities with DDA could not be completed and the same would be done immediately once the defendant no.1 returns from Australia. I bonafidely believed the defendants.

9. I say that I informed the defendants time and again about the readiness and willingness to complete my obligation under the agreement dated 28.09.2008 and pay the balance consideration amount at the time of the execution of the sale documents.”

16. Clearly no details have been given as to how contact was established with defendants No. 1 & 2 especially keeping in view the fact that defendant No.1 was mostly outside the country. There is no attempt to explain when the plaintiff contacted defendant No. 1 or 2, whether the contact was by

phone or whether any personal meetings took place. It is expected that in case the plaintiff was serious about completing the transaction, he would have vigorously followed up with defendants No. 1 & 2 especially if the said defendants were not responding.

17. In fact the deposition of the plaintiff falls if one looks at the cross examination of the plaintiff. As noted above, in his evidence by way of affidavit he has stated that he made innumerable enquiries with the defendant about execution of the sale document. However, the relevant portion of his cross-examination that took place on 18.12.2009 reads as follows:-

“Q- I put it to you that you never met defendant No. 2 Mr. S.K. Chopra?

Ans. It is wrong. I further state that I met him twice. One time in the office of Ravi Raj and second time I alongwith Mr. Lalit Gulati went to his (S.K. Chopra) home alongwith Mr. Ravi Raj also to know why he is delaying the execution of the sales documents. His (S.K. Chopra) house is near to one big temple in Greater Kailash.

Q- As you have deposed above, that for the second time, you met Mr.S.K. Chopra, in which year, did you meet him?

Ans. I met him in early of the year 2007.

Q- Is it correct that after you met in the early of the year 2007, thereafter you never met Mr. S.K. Chopra?

Ans. It is correct. (emphasis added) (Vol. During the meeting of the year 2007 with Mr. S.K. Chopra, he told me that as he (S.K. Chopra) used to travel a lot and I should meet/contact Mr. Ravi Raj for the sale transaction execution date.)

Q. Is it correct that you never met defendant No.1 Mrs. Parveen Anand, nor had ever talked her?

Ans. It is correct. (emphasis added) (Vol. Mr. S.K. Chopra told that Mrs. Anand is staying abroad and she has given attorney to him (S.K. Chopra) for sales of the plot in question. Therefore, all the matters relating to this transaction has to be completed by Mr. Chopra Only).”

18. Further on 28.11.2011 when defendant No. 2 was cross-examined, counsel for the plaintiff put a question that the plaintiff had met defendant No. 2 several times in his office. Defendant No. 2 denied the suggestion.

19. In view of the above cross-examination, it is clear that at best the plaintiff has met defendant No. 2 once as alleged in early 2007. Apart from that there has been no contact whatsoever between the parties. What follows is that after the Agreement to Sell dated 28.09.2006, the plaintiff met defendant No.2 only once in early 2007 (which meeting is also doubtful), no telephonic talk took place (none is proved) and no correspondence also took place till legal notice dated 02.04.2008. On the evidence placed on record it is obvious that there has been no worthwhile communication between the plaintiff and the defendants. Hence the contention of the plaintiff that he made innumerable enquiries from the defendant about execution of the sale documents and that he was willing to pay the balance consideration is incorrect.

20. One cannot help noticing the evidence led by defendant. A perusal of the evidence by way of affidavit filed by defendant No.2 would show that the entire transaction appears to have been managed by one Mr.Ravi Raj son

of Mr. Ram Lal. Defendant No.2 has clearly stated in his evidence that they have repeatedly been contacting Mr. Ravi Raj who was the person with whom the entire transaction was worked out and at no stage ever they met the plaintiff prior to filing of the present court proceedings. Similar evidence has been led by Defendant No.1. Reference may be had to relevant part of the cross-examination of Defendant No.2 which took place on 28.11.2011 which reads as follows:-

“Q.I put it to you that Mr.Ravi Raj has no role in the execution of the agreement Ex.P1?

Ans. It is incorrect. **Vol.** it was only Ravi Raj and nobody else who had come to me.

Q. I put it to you that what you have deposed hereinabove that “it was only Ravi Raj and nobody else who had come to me” is wrong?

Ans. It is incorrect.

Q. Did you read Ex.P1 before signing the same?

Ans. Yes, I had read before signing the same.”

.....

Q. I put it to you that the payment of Rs.4.50 lacs was made by plaintiff and not by Ravi Raj?

Ans. It is incorrect.

Q. I put it to you that plaintiff approached to you as well as defendant No.1 many times for the registration of the perpetual lease of the suit property?

Ans. It is incorrect. **Vol.** Nobody, never approached me. I had met none else except Ravi Raj.

Q. I put it to you that plaintiff met you several times in your office?

Ans. It is incorrect. **Vol.** Nobody, never approached me. I had met none else except Ravi Raj.”

Similarly reference may be had to the cross-examination of defendant No.1 held on 3.5.2011 relevant portion of which reads as follows:-

“Q Is it correct that plaintiff/Shri Sangeet Aggarwal met you and paid you the consideration for the agreement to sell Ex.P1?

(At this stage, the record of the case has been placed before the witness.)

Ans.I never saw Mr.Sangeet Aggarwal. Today is the first day when I saw him in the Court premises.

Q. I put it to you that you have met Sangeet Aggarwal/plaintiff when the agreement to sell was signed?

Ans. It is incorrect.

Q. Please see para No.6 of your affidavit of evidence. I put it to you that the figure of Rs.4.00 lacs mentioned therein is wrong?

(At this stage, the record of the case has been placed before the witness.)

Ans. I never met Ravi Raj. I never met Sangeet Aggarwal and never received any money from them.

Q.Is it correct that plaintiff Sangeet Aggarwal offered you to pay the balance consideration mentioned in the agreement to sell Ex.P1?

Ans. I never ever met and talk to him/Sangeet Aggarwal and nobody contacted me.

Q. I put it to you that the plaintiff talked to you as well as to your attorney for making the payment of the balance consideration mentioned in the agreement to sell Ex.P1?

Ans. It is incorrect.

21. The above cross-examination of defendants No. 1 and 2 and the cross examination of the plaintiff establish that the whole transaction has been managed by Mr. Ravi Raj who appears to be the broker. However, in the plaint and in the plaintiff evidence, there is no mention of Mr. Ravi Raj. In his cross examination, the plaintiff admits that it was Mr. Ravi Raj who got the dealing done for the plot in question. It hence is clear that defendants were only in touch with Mr. Ravi Raj. Plaintiff has never contacted the defendants or Mr. Ravi Raj to complete the transaction.

Clearly, there is no cogent evidence to show that the plaintiff was willing to perform his part of the contract.

22. On the issue of readiness on the part of the plaintiff i.e., as to whether the plaintiff had the funds to complete the transaction, the plaintiff has, through his two witnesses, filed statement of accounts of two of his bank accounts. He has also filed on record a communication of Tibson Investment Pvt Ltd.

23. Perusal of the Statement of Account filed by the two witnesses of the plaintiff from Hong Kong and Shanghai Bank and Allahabad Bank reveals that as on January, 2007 the plaintiff does not have adequate funds in the bank accounts. The Agreement to Sell is dated 20.09.2006, the period of three months for completion of the transaction, lapses by the end of December, 2006. The statement filed by Hong Kong and Shanghai Bank being Ex.PW 2/1 shows that on 31.01.2007 the balance in the account of the plaintiff was only Rs.51,795.46. It is only after 13th March, 2007 that the balance had crossed Rs.20 lacs. Similarly, though the plaintiff claims to be a partner of Euroasia Global nothing is placed on record to prove the same. The statement of account of Allahabad Bank being Ex.PW3/1 of Euroasia Global also shows that on 5.2.2007 when the account starts the balance is only Rs.5,100/-. These accounts do not show that the plaintiff has sufficient funds in December 2006/January 2007, the relevant period.

24. The communication of Tibson Investment Private Limited Ex.PW4/1 inspires no confidence. The background of the said Tibson Investment Private Limited is not placed on record. There is a letter dated 2.12.2006 allegedly written by the plaintiff to the said investment company and the reply dated 9.12.2006 stating willingness to give the said loan which is

Ex.PW4/1. No details are given about the said Tibson Industrial Private Limited Company, whether it is in the business of giving loans on mortgage of properties or the kind of business it is running. Further, in the cross-examination of Mr.Pramod Kumar Tibriwala, PW 4, who is stated to be the Finance Officer of Tibson Investment Private Limited states that the said finance company has all the documents including supporting applications, copies of Income Tax Return, Balancesheet, copy of Agreement to Sell dated 28.09.2006. However, the documents placed on record, namely, the letter dated 9.12.2006 of Tibson Investment Private Limited (Ex.PW4/1) and the letter allegedly written by the plaintiff to the said investment company dated 2.12.2006 (Mark A) do not in any way show that the documents, namely, copies of Income Tax Return and balancesheet were forwarded by the plaintiff when allegedly applying for the loan from the said investment company. Hence, the letter dated 09.12.2006 being exhibit PW 4/1 inspires no confidence. In the absence of any proper background of Tibson Investment Private Limited, the letter cannot be accepted. The contention of the plaintiff that it could have raised the funds from the private company cannot be believed.

25. Learned counsel for the plaintiff and defendant have, after the hearing, filed a compilation of various judgments. All of them need not be mentioned as the proposition of law is quite clear. Reference only may be had to one of the judgment filed by the plaintiff of the Hon'ble Supreme Court in the case of ***Prakash Chandra v. Angad Lal and Ors. AIR 1979 SC 1241*** where the Hon'ble Supreme Court held that the ordinary rule is that specific performance should be granted. It ought to be denied only when

equitable considerations point to its refusal and the circumstances show that the damages would constitute an adequate relief.

Learned counsel for the defendant relies on the judgment of the Hon'ble Supreme Court in the case of J.P Builders (supra) where in para 27, it was held as follows:

“It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non- compliance with this statutory mandate, the Court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. “Readiness and Willingness” to perform the part of the contract has to be determined/ascertained from the conduct of the parties.”

Reference may be had to the judgment of the Supreme Court in the case of *N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao (1995) 5 SCC 115* where it was held as follows:

“5. ...Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court

must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was always ready and willing to perform his part of the contract.”

26. Coming to the facts of this case, the statement of accounts filed by the witness of the plaintiff show that the plaintiff at the relevant period did not have sufficient funds. The alleged financial accommodation given to him by Tibson Investment Pvt Ltd cannot be believed. It would hence follow that at the relevant time i.e. three months after the Agreement to Sell when the transaction had to be completed, the plaintiff was not possessed of sufficient funds to complete the transaction. It is neither pleaded nor proved that plaintiff sought extension of time from the defendant. Hence it is held that on facts, the plaintiff was neither ready nor willing to perform his part of the transaction.

27. One more contention of the plaintiff may be noted. In the course of arguments, counsel for the plaintiff relied on Clause 3 of the Agreement to Sell dated 28.09.2006 (Ex.P1) which reads as follows:-

“3. That the first party will be compelled of perpetual lease deed upto registered in the office of concerned authority within the above

said period at his/her/their own cost and expenses. If the first party will not be complete the perpetual lease deed within above said period then the final date of payment has been extended upto the registration of Perpetual Lease Deed.”

28. The clause is not properly drafted. However, the plaintiff contends that as per the clause it was the obligation of the seller to have the perpetual lease deed registered and in case the perpetual lease deed was not registered the final date of payment would stand extended. Learned counsel for the plaintiff contends that the defendant has not placed on record either the date of registration of the lease deed by DDA nor a copy of the same has been placed on record and hence according to his submission the period for making payment by the plaintiff stands extended. The learned counsel further submitted that even as of today, the defendant has not placed on record the date of registration of the lease deed or a copy of the same and hence the period for making payment by the plaintiff has, even on date, not arisen.

29. The said contention of the plaintiff has to be rejected outright. In the plaint no such contention has been made by the plaintiff. On the contrary, in the plaint in paragraph 7 it is contended that defendants had agreed that they would convert the property from lease hold to free hold within three months. There is no reference to the execution of a lease deed by DDA. This contention appears to have been raised for the first time while cross-examining defendant No.1 on 03.05.2011. The relevant part of the cross-examination reads as follows:-

“Q. Is it correct that in DDA you were supposed to apply for registration of the lease deed prior to execution of sale document in

favour of the plaintiff?

Ans. As far as I understand in January 2004 I paid all/full amount of money to the DDA and the plot was allotted to me in my name in January 2004.

Q. I put it to you that it was only you who could have applied to the DDA for registration of the perpetual lease deed of the suit plot?

Ans. Perpetual lease deed was executed in my name by the DDA of the suit plot.

Q. I put it to you that the perpetual lease deed of the suit plot was not executed in your name by the DDA?

Ans. It is incorrect.”

30. In view of the above, it is clear that the lease deed has been registered by DDA way back in 2004. The contention of the plaintiff that he had no knowledge of registration of the lease deed and that the defendant ought to have placed a copy of the said lease deed on record has no merits. As there was no such issue or contention raised in the plaint, hence there was no occasion for the defendant to have filed the said document on record. Hence, the contention of the plaintiff that in the absence of a copy of the perpetual leased deed on record, the time for completing the agreement to sell gets extended in perpetuity cannot be accepted. No such plea was raised in the plaint. No such contention flows from a reading of clause 3 of the agreement to sell.

31. In view of the above, I hold that the plaintiff has not been ready and willing to perform his part of the agreement. Issue no.1 is decided accordingly.

32. ISSUE NO.2

Issue No. 2 is whether the discretion in the grant of the relief of specific performance is to be exercised in favour of the plaintiff.

In view of what is my finding on issue No. 2, the present issue would not arise as the plaintiff has failed to make out a case for specific performance of the Agreement to Sell.

33. ISSUE NO.3

Issue No. 3 is whether the defendants had not dealt with the plaintiff and had dealt with Mr.Ravi Raj only and whether the said Mr.Ravi Raj had defaulted in any of the obligations undertaken by him and if so to what effect.

34. Admitted fact is that Mr. Ravi Raj is one of the brokers who got the transaction executed. The defendants have clearly stated that they have dealt only with Mr. Ravi Raj and have at no stage interacted with the plaintiff. It is nobody's case that Mr. Ravi Raj was the attorney of the plaintiff. Hence the fact that the defendants dealt only with Mr. Ravi Raj is of no legal consequence. At best, it only shows plaintiff was not in touch with the defendants.

35. In view of the above the present suit is dismissed. No orders as to costs.

JAYANT NATH, J.

JULY 19, 2013
n/rb 'raj'