

IN THE HIGH COURT OF DELHI AT NEW DELHI

Order Reserved on: 18th February, 2014

Order Pronounced on: 17th April, 2014

CS(OS) 1280/2013

M/S SPEARHEAD DIGITAL STUDIO PVT. LTD. PLAINTIFF

Through: Mr. Arvind Nayar, Mr.
Anshu Bhanot and Mr.
Prateek Kumar Srivastava,
Advocates.

versus

H.K. MITROO DEFENDANT

Through: Mr. P.S. Bindra and Ms.
Shweta Priyadarshini,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJEEV SACHDEVA, J.

**IA 15339/2013 (On behalf of the Defendant Under order 7
rule 11 Code of Civil Procedure)**

1. The Defendant has moved this application under Order VII Rule 11 seeking rejection of the plaint on the ground that the plaint does not disclose a cause of action.

2. The Plaintiff has filed the present suit seeking specific performance of an oral agreement to sell allegedly entered into between the Defendant and the Plaintiff for a total sale consideration of Rs.84,00,000/- out of which the Plaintiff claims that a sum of Rs.55,60,000/- stands paid to the Defendant.
3. The case of the Plaintiff is that the Plaintiff is running its business from the suit premises being C-161, Okhla Industrial Area, Phase-I, New Delhi consisting of basement, ground floor, first floor and second floor. The Defendant inducted the Plaintiff as his tenant by a lease agreement dated 01.04.2000. The term of the lease under the Lease agreement was stated to be 11 months which term expired on 31.03.2001.
4. The Plaintiff pleads that by virtue of an oral agreement to sell, the Plaintiff continued to retain possession and paid two instalments each month i.e. Rs.10,000/- towards monthly rental and Rs.50,000/- per month as part of the sale consideration towards oral agreement

to sell.

5. As per the Plaintiff, the lease agreement dated 01.04.2000 stipulated that the monthly rental shall be Rs.10,000/- per month. It is the case of the Plaintiff that at the time of inception of the tenancy, the Defendants showed his inclination to sell off the suit property for a sale consideration of Rs.60,00,000/-. However, as the Plaintiff expressed his inability to pay the entire sale consideration in one go, the Plaintiff proposed that he shall pay Rs.10,000/- towards monthly rental and Rs.50,000/- per month towards part sale consideration. As per the Plaintiff, the Defendant proposed that since the property was being purchased in instalments, he would sell the same at Rs.84,00,000/-. This proposal is alleged to have been accepted by the Plaintiff and accordingly, the Plaintiff started paying a sum of Rs.60,000/- per month i.e. Rs.10,000/- towards rental and Rs.50,000/- towards part sale consideration. Learned counsel for the

Plaintiff had contended that the so called oral agreement was also arrived at on 01.04.2000 on the date when the lease commenced.

6. As per the Plaintiff the payments in the above terms were made from the very inception of the tenancy till the year 2008 and thereafter the monthly instalment towards the sale price was increased to Rs.65,000/- and the Plaintiff paid Rs.75,000/- per month i.e. Rs.10,000/- towards rental and Rs.75,000/- towards part sale consideration.
7. The Plaintiff claims to have paid a sum of Rs.55,60,000/- towards sale consideration in instalments and Rs.11,60,000/- towards rental till July 2009.
8. On 23.02.2010, the Plaintiff filed a suit for injunction before the Court of Senior Civil Judge, Patiala House Courts, New Delhi. In the said suit, the Plaintiff took a plea that after the execution of the lease agreement, the Defendant showed his willingness to sell the suit

property. As per the Plaintiff, the Defendant disputed the said oral agreement by filing his written statement in the said suit and also filing a suit for possession, arrears of rent, mesne profit and damages before the Court of the District Judge, Saket, New Delhi for ejectment of the Plaintiff. The Plaintiff thereafter filed the present suit for specific performance of the oral agreement to sell.

9. The Defendant has filed the written statement disputing the stand of the Plaintiff. For the purposes of consideration of an application under Order VII Rule 11 CPC, what is required to be examined is the averments in the plaint and the supporting documents filed and relied upon by the Plaintiff. The defence of the Defendant and the averments raised in the written statement are not germane for the purposes of the disposal of the application under Order VII Rule 11.

10. The Supreme Court of India in the case of ***SOPAN SUKHDEO V. ASSISTANT CHARITY COMMISSIONER (2004) 3***

SCC 137 has laid down that for the purposes of deciding an application under Order 7 Rule 11, the averments made in the plaint are germane and the pleas taken by the Defendant in the written statement would be irrelevant. Further, the court also emphasized that a meaningful and not formal reading of the plaint was to be adopted so as to nip in the bud any clever drafting of the plaint to create an illusion of a cause of action.

11. The court has to see the averments in the plaint to decide whether the suit discloses a triable cause of action. A meaningful and not a formal reading of the plaint has to be adopted to determine whether the plaint discloses a cause of action or a clever drafting methodology has been used to create a semblance of a cause of action. Where the Court comes to a conclusion that by adopting a method of clever drafting a semblance of a cause of action is being created, the court has to nip the vexatious and meritless litigation in

the bud.

12. The Supreme Court in the case of ***T. ARIVANDANDAM vs. T.V. SATYAPAL (1977) 4 SCC 467*** has laid down as under:-

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order

10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage.....”

13. The Supreme Court in the case of ***T. ARIVANDANDAM (SUPRA)*** has laid down that where the suit is a flagrant misuse of the mercies of the law in receiving a plaint, the court has to give a meaningful reading of the plaint and not a mere formal meaning. Where on a meaningful reading of the plaint it is manifestly vexatious or meritless in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 taking care to see that the grounds mentioned therein are fulfilled. If by clever drafting illusion of a cause of action is created, the court can nip it in the bud.
14. Learned counsel for the Defendant has submitted that the stand of the Plaintiff on its own showing does not disclose a cause of action. He contended that the

Plaintiff in the suit for permanent injunction filed by the Plaintiff before the Court of Additional District Judge had filed the Statement of Accounts alongwith copies of TDS certificates. The Statement of Accounts and the TDS certificates filed by the Plaintiff before the District Judge evidenced that for every payment made by the Plaintiff either towards the so called rental or part sale consideration, TDS was deducted. The Statement of Accounts and the TDS certificates filed by the Defendant have been admitted by the Plaintiff. Learned counsel for the Defendant submitted that since TDS is deducted on payment made towards rent and not towards payment of sale consideration, establishes that all the payments made by the Plaintiff were towards rental and not towards sale consideration and if the payment made by the Plaintiff was towards the sale consideration, there was no question of the Plaintiff deducting any amount towards TDS and issuing TDS certificates. The fact that the Plaintiff was deducting TDS, it was contended by the

Defendant, fortifies the fact that the entire payment was towards the payment of rent.

15. On examination of the plaint in the light of the settled principles of law governing order 7 rule 11, I am of the view that the Plaint is liable to be rejected.

16. There is a clear contradiction in the case of the Plaintiff with regard to the date on which the alleged oral agreement is stated to have been arrived at. The averments in the plaint as well as the submission of the counsel for the Plaintiff is that the oral agreement was arrived at simultaneously with the execution of the lease deed on 01.04.2000 and further the payment of Rs. 50,000/- is also stated to have commenced with the payment for rental of Rs. 10,000/-. In the suit for permanent injunction filed by the Plaintiff, the contention is that after the execution of the lease agreement, the Defendant showed his willingness to sell the property.

17. It is averred in the plaint that on 01.04.2000 the

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Defendant inducted the Plaintiff as its tenant vide a lease agreement dated 01.04.2000. The Lease was for a period of 11 months only and expired on 31.03.2001. The tenanted premises are claimed to be basement, ground floor, first floor and second floor of the property.

18. Perusal of the Lease agreement dated 01.04.2000 relied upon and filed by the Plaintiff shows that the agreement is typed on a stamp paper of Rs. 10/-. The premises described in the same and extracted by the Plaintiff in Para 5 of the plaint is Ground floor, basement, mezzanine floor and that the entire first floor is retained by the lessor for his personal use and also a office on the ground floor. The period of lease mentioned in 5 years expiring on 31.03.2005. The stamp paper on which the said lease agreement is typed bears the date on sale as 19 May 2000. The lease agreement is insufficiently stamped and is also unregistered. There is a clear contradiction in the

averments in the plaint and the lease agreement filed by the Plaintiff in respect to the tenancy premises and also the term of the tenancy.

19. Further the contradictions in the plaint and also the documents filed by the Plaintiff create an ambiguity in the date on which the so called oral agreement is arrived at. Further it creates an ambiguity in the extent of the premises that are alleged to have been agreed to be sold.

20. For the creation of the lease, the parties are alleged to have executed a lease agreement on 01.04.2000. The counsel for the Plaintiff could not answer the query as to when on 01.04.2000 a lease agreement could be executed between the parties for creation of lease, then why the parties did not execute an agreement to sell which is also allegedly entered into simultaneously.

21. The terms of the oral agreement are also not clear. The period in which the payment is to be made is also

not averred in the plaint. What is contended is that the sale consideration agreed upon is Rs.84,00,000/- to be paid in instalments of Rs.50,000/- per month. The annual payment would be Rs. 6,00,000/- and at this rate if the Defendant were not to charge any interest the payments would be completed in 14 years. Even if the averments of the Plaintiff were to be taken on their face value that the sale consideration was increased from 60,00,000/- to 84,00,000/- as payment was being made in instalments would imply that the payment would be spread over a period of 14 years and carry simple interest of only 2.85% per annum. The property is stated to be 2200 square feet each on basement, ground, first and second floor (i.e. 8800 square feet) and situated in Okhla Phase – I, New Delhi and allegedly rented out for Rs. 10,000/- per month.

22. The contradictions do not lend credence to there being any oral agreement to sell. The terms and conditions of sale are not clearly established. It is further

inconceivable that a party would enter into a lease agreement by a written document and on the same date not reduce the terms of the agreement to sell in writing. There is also no plausible explanation as to why TDS is deducted on payments made towards the alleged sale consideration. It is apparent that the story of an oral agreement to sell has been created only as counterblast to the demand for vacations of the tenancy premises by the Defendants against the Plaintiff.

23. The plaint fails to show a clear cause of action to sue. A meaningful reading of the plaint clearly discloses that a clever drafting methodology has been used to create a semblance of a cause of action. It is the duty of the court to nip, the vexatious and meritless litigation, in the bud.

24. The methodology of clever drafting to create a semblance of cause of action is further exposed when a comparison is drawn between the plaint filed by the

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Plaintiff seeking permanent injunction and the present
plaint.

25. In the suit filed by the Plaintiff against the Defendant
seeking permanent injunction, the Plaintiff has averred
as under:

“8. That the threats of forceful and illegal
dispossession from the Defendant **continued
after July, 2009** and on 19.02.2010 the
Defendant alongwith his muscle men and with
the help

13 **the cause of action further arose in July,
2009** when the Plaintiff company offered the
Defendant to accept the balance sale
consideration but the intentions of the
Defendant became malafide and the Defendant
refused to accept the balance sale
consideration and started extended threats for
forceful dispossession of the Plaintiff from the
suit premises. The cause of action further arose
on 19.02.2010 when

(emphasis supplied)

In the Present plaint the Plaintiff has very cleverly

omitted to mention about the refusal by the Defendant in July 2009. The Plaintiff has contended that it was for the first time in the Written Statement filed by the Defendant to the suit for Permanent Injunction filed by the Plaintiff, that the Defendant disputed the oral agreement to sell. Even in the case of action paragraphs the averments about July, 2009 are missing.

26. The omission of the alleged events of July 2009 is not bonafide omission but clearly a conscious decision. The Plaintiff has filed the present suit for specific performance of an oral agreement to sell. Even if assuming there was any such agreement, the limitation to sue on such an oral agreement would commence from the date stipulated for performance and if no date is stipulated then when the performance is refused. As per the suit for permanent injunction, the Defendant refused to perform the agreement in July 2009 and as such the cause of action would accrue

and time would start to run on refusal. The present plaint was first presented on 30.04.2013 and then refilled after a substantial delay on 03.07.2013, even if the date of first filing is taken as the relevant date, the plaint is barred by limitation being filed after a lapse of a period of 3 years from the date of alleged refusal in July 2009.

27. In the case of **ASHOK MAILK VS RAMESH MAILK 2008 (150) DLT 693** a single judge of this court while dealing with an application seeking rejection of the plaint seeking specific performance of an oral agreement to sell held as under:

“9. In any event, the limitation prescribed for a suit for specific performance of a contract as per Article 54 of the Schedule to the Limitation Act, 1963 is three years. The time from which the period begins to run is the date fixed for the performance or, if no such date is fixed, when the Plaintiff has notice that the performance is refused. As per the averments made in the plaint, there was no dated fixed

for the performance. Therefore, the time from which the period begins to run would be when the Plaintiff had notice that performance was refused. The averments contained in the plaint disclose that the Plaintiff asked the Defendant to execute the sale deed in March, 1993, but he did not. Therefore, the starting point of limitation would be March, 1993. The suit was filed on 05.09.2001. It was beyond the period of three years stipulated under the Limitation Act, 1963. Accordingly, the suit is time barred and the plaint is liable to be rejected on the ground that the suit appears from the statements made in the plaint to be barred by any law (in this case the law of limitation).

28. Learned counsel for the Plaintiff relied on the judgment of the Supreme Court in **ALKA BOSE VS. PARMATMA DEVI AND ORS. (2009) 2 SCC 582** to contend that an agreement to sell comes into existence when vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms and that it can be oral. The proposition of law that there can be

an oral agreement to sell is no longer res-integra. However the said judgment does not further the case of the Plaintiff as the facts in the present case do not show that there was ever any agreement between the parties for sale of the property. As enumerated hereinabove there are various contradictions in the case of the Plaintiff that belie the very factum of any agreement to sell.

29. Further reliance by the learned counsel for the Plaintiff further on the judgment of this Court in **ARUNESH PUNETHA VS. BOSTON SCIENTIFIC CORPORATION AND ORS. 2006 (3) AD (DELHI) 141** also does not further the case of the Plaintiff. The Single Judge of this court held that so long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. In the facts of the present case it is not the strength or the weakness of the case of the Plaintiff that is in issue,

what is in issue is whether the plaint discloses any cause of action. The bundle of facts pleaded read in the light of the documents of the Plaintiff do not disclose a cause of action rather they show a clear contradiction in the stand of the Plaintiff.

30. The Plaint does not disclose any clear cause of action and a clever drafting methodology has been adopted to create a semblance of cause of action. The suit is also time barred and the plaint is liable to be rejected on the ground that the suit appears from the averments made in the plaint and the supporting documents filed by the Plaintiff to be barred by the law of limitation.
31. The application of the Defendant under Order 7 rule 11 is accordingly allowed and the Plaint is rejected with costs quantified at Rs. 25,000/-.

SANJEEV SACHDEVA, J

April 17, 2014
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