

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

% Order delivered on: 24th November, 2014

+ **CS(OS) No.1954/2011**

ISHWAR DAYAL KANSAL Plaintiff

Through Plaintiff in person

versus

MOTION PICTURES ASSOCIATION Defendant

Through Mr. Harish Malhotra, Sr. Adv.
with Mr. Rajender Agarwal,
Adv.

CORAM:

HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (Oral)

1. This is a suit for specific performance, declaration and permanent and mandatory injunction filed by the plaintiff against the defendant. The issues in the matter were framed vide order dated 28th April, 2014. Vide the same order it was also directed that issues No. 1 and 2 be treated as preliminary issues.

2. Submissions have been made by both the sides on issue No. 2 which is “whether the suit claim is within time?”

3. It is the case of the plaintiff as stated in the plaint that the plaintiff in December, 1999 made an offer to the defendant to purchase the suit property, pursuant to the advertisements by the defendant in the newspapers for sale of the suit property.

Subsequent to exchange of communication between the parties, plaintiff revised his offer on 14th December, 1999 and paid an advance amount of Rs. 20 Lacs. Rs. 1,20,00,000/- was to be paid at the time of registering the agreement to sell and handing over vacant possession to the plaintiff. Balance Rs. 2,60,00,000/- was to be paid with 18 months handing over the possession to the plaintiff. The said offer was accepted by the defendant by passing a resolution and on 4th February, 2000 defendant issued the letter of acceptance of the offer made by the plaintiff.

4. Subsequently, an application seeking permission to transfer the suit property to the plaintiff was made to the Income Tax Department. The Income Tax Department issued a No Objection certificate on 8th May, 2000 in respect thereto. Thereafter on various occasions, meetings took place between the parties and correspondences were exchanged.

5. It has been stated by the plaintiff that on various occasions, the plaintiff has been asking for possession of the suit property but the same has not been transferred to him till date. The property has still not been converted into a freehold property. Even though the plaintiff on 12th May, 2008 informed the defendant that it has come to his knowledge that DDA has approved the scheme for conversion of properties of Darya Ganj area into freehold, defendant did not act thereupon.

6. It is the case of the plaintiff that as agreed between the parties, it was a condition precedent that the suit property would be converted

from leasehold to freehold before execution of the sale deed. The resolution passed by the defendant in the year 1999 was to the effect that the suit property would be sold after converting the same into freehold. However, defendant failed to get the suit property converted into freehold.

7. On the other hand it has been contended by the defendant that the suit is barred by limitation since the alleged agreement for sale of the suit property was revoked/cancelled by the defendant long ago. It has been stated that the offer of the plaintiff in respect of the suit property was made in December, 1999 which was accepted in February, 2000. After receiving permission from the Income Tax Authority on 8th May, 2000, which was communicated to the plaintiff, the defendant wrote to the plaintiff that all formalities have been completed, so the plaintiff shall pay the due amount as per the terms of the agreement. However, the plaintiff failed to make payment and it was informed by the plaintiff to the defendant that his funds were blocked with UTI and Tata Balanced funds.

8. Subsequently vide various letters the defendant informed the plaintiff that the said agreement between the parties stood cancelled and the advance earnest money is forfeited. In fact on 9th December, 2005, plaintiff issued a notice to the defendant asking him to hand over the possession of the suit property. In response to the said letter, defendant wrote to the plaintiff that more than 5 years had passed, the agreement stood expired long back and lapsed, agreement was executed initially for payment of Rs. 1, 20,00,000/- on

receipt of Income tax clearance and balance of Rs.2,60,00,000/- within 18 months of agreement. The plaintiff failed to fulfill his obligations and the advance of Rs. 20 lacs stood forfeited.

9. It is averred that on receipt of the letter of the plaintiff to the defendant that it has come to his knowledge that DDA has approved the scheme for conversion of properties of Darya Ganj area into freehold, the defendant wrote a letter dated 19th May, 2005 stating that on account of continuous default on part of the plaintiff, the agreement stood cancelled and the same could be revived only on mutual agreed terms in writing.

10. It is also averred that vide letter dated 30th September, 2005 written by the defendant to the plaintiff in response to plaintiff's letter dated 12th August, 2005, it was specifically stated by the defendant that "the agreement stands lapsed on account of your failure and defaults. Over 5 years have passed and your being ready willing at this stage is irrelevant."

11. I have heard submissions on behalf of both the parties. In the matter when the issue of limitation is a doubtful case, normally, it becomes mixed question of facts and law. But at the same time, if Court finds that on the face of averments and facts stated in the plaint, the suit is time barred, then the Court can reject the plaint.

12. It is settled position in law that if by means of clever drafting a camouflage has been created in order to create an illusion of a cause of action, such cases should be nipped in the bud at the first hearing itself i.e. even before admitting the suit and issuing summons or any

time thereafter. The judgments of the Supreme Court in the case of ***T. Arivandandam Vs. T.V. Satyapal***, (1977) 4 SCC 467 (para 5); and ***Church of Christ Charitable Trust Vs. Ponniamman Education Trust***, (2012) 8 SCC 706 (paras 10, 12 & 13); and ***Ajay Goel Vs. K.K.Bhandari***, 1999 (48) DRJ 292 (paras 2, 5-8, 15) are relevant in this regard. Therefore, this Court can suo-moto exercise its powers under Order 7 Rule 11 CPC without there being a formal application for the said purpose.

13. Article 54 of the Schedule to the Indian Limitation Act, 1963 (herein after referred to as “the Act”) postulates that for specific performance of a contract the period of limitation is three years from the date fixed for the performance, or, if no such date is fixed, from the date the plaintiff has notice that performance is refused. Under first part of Article 54, once date for performance of the contract has been fixed by the parties, the limitation begins to run from that date and specific performance of the contract could be had within three years from that date unless the parties by an agreement extend the fixed time.

14. In the present case, the date is already fixed between the parties, the parties have clearly mentioned the time within which the contract should be performed. The three years period therefore in the present case, has to be reckoned the date is already fixed. It is only in a case where time is not an essence of the contract and no time is fixed for the performance of the contract, that three years period under Article 54, will be reckoned from the date when the plaintiff has

noticed that the performance of the contract has been refused. Any communication issued by the plaintiff after expiry of the prescribed period of limitation has no consequence. The reference in this regard by the plaintiff is without any substance.

15. In ***Janardhanam Prasad Vs. Ramdas*** (2007) 15 SCC 174, the Supreme Court observed as under:

“8. Applicability of the provisions of Article 54 of the Limitation Act must, therefore, be determined having regard to the aforementioned factual matrix in mind. It reads as under:

“For specific performance of a contract Three years
The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.”

9. The Court, in applying the period of limitation, would first inquire as to whether any time was fixed for performance of agreement of sale. If it is so fixed, the suit must be filed within the period of three years, failing which the same would be barred by limitation. Here, however, no time for performance was fixed. It was for the Courts to find out the date on which the plaintiff had notice that the performance was refused and on arriving at a finding in that behalf, to see whether the suit was filed within three years thereafter.”

16. The controversy in regard to the limitation was considered by the Court in ***Tarlok Singh v. Vijay Kumar Sabharwal*** [1996] 3 SCR 879 wherein the Court has held that when the time has been fixed for performance of the contract by operation of Article 54 of the Act, the time begins to run from the date fixed by the parties. The Court observed thus:

“The question is : as to when the limitation began to run? In view of the admitted position that the contract was to be performed within 15 days after the injunction was vacated, the limitation began to run on April 6, 1986. In view of the position that the suit for perpetual injunction was converted into one for specific performance by order dated August 25, 1989, the suit was clearly barred by limitation. We find force in the stand of the appellants. We think that parties had, by agreement, determined the date for performance of the contract. Thereby limitation began to run from April 6, 1986. Suit merely for injunction laid on December 23, 1987 would not be of any avail nor the limitation began to run from that date. Suit for perpetual injunction is different from suit for specific performance. The suit for specific performance in fact was claimed by way of amendment application filed under Order VI, Rule 17, C.P.C. on September 12, 1979. It will operate only on the application being ordered. Since the amendment was ordered on August 25, 1989, the crucial date would be the date on which the amendment was ordered by which date, admittedly, the suit is barred by limitation. The Courts below, therefore, were not right in decreeing the suit.”

17. As per the documents placed on record, it is apparent no communication took place between the parties after September, 2000. It was on 25th January, 2003 that the plaintiff wrote to the defendant claiming possession of the suit property to which defendant vide letter dated 5th February, 2003 replied that the delay has been on the part of the plaintiff who has defaulted in making the payment of the consideration. It was further informed to the plaintiff vide the same letter that the suit property is being kept vacant and the plaintiff may inform the defendant as to when he would give them the Pay Order of the balance amount. Thereafter vide letter dated 25th March, 2005, plaintiff again asked the defendant to hand over

the possession of the suit property to the plaintiff. Defendant vide letter dated 19th May, 2005, informed the plaintiff as under:

“Your letter dated 25.03.2005 has come as a shock to us contents are contrary to your agreement and acquiescence in the meeting you had with the members of the Executive committee on 15.03.2005 at 3.30 p.m.

From your letter it appears that you have been and are only speculating and waiting for market price to escalate so that you can attempt to have the property at the price of Rs 4.00 crores agreed to in the year 1999.

We are in 2005 and the Form 37-I signed by yourselves and us was filed on 08.02.2000 with the Income Tax department and No Objection Certificate from Income Tax was issued on 08th May, 2000 and till date you have not honoured any of your commitments.

As per terms of the agreement, upon getting the No Objection Certificate from Income Tax, you were to pay Rs. 1.20 crores to us and till date you have not made any move to do. Even vide our letter of dated 05.02.2003 you were asked to honour your commitments, which you did not.

Five years have already passed and you were apprised of this fact in the last meeting on 15.03.2005. Please note that we have never been at fault and it is you, the buyer, who had to be ‘Ready and Willing’, but your conduct shows otherwise.

On account of continuous default on your part in honouring the terms of agreement, the Agreement can be revived only on mutually agreed terms in writing”

18. In reply to the same, plaintiff wrote letter dated 12th August, 2005 denying the averments made in letter dated 19th May, 2005 and

again calling upon the defendant to handover the possession to the plaintiff. Vide letter dated 30th September, 2005 written by the defendant to the plaintiff in response to letter dated 12th August, 2005, it was specifically stated by the defendant that

“The agreement stands lapsed on account of your failure and defaults. Over 5 years have passed and your being ready willing at this stage is irrelevant.”

19. From the above it is apparent that vide letter dated 12th August, 2005, the defendant had specifically stated that the agreement stood lapsed between the parties. The limitation for taking an action against the defendant by the plaintiff, if calculated from the said date, ended on 11th August, 2008. During this period, there is no assurance or acknowledgement or extension of time of period of performance given by the defendant to the plaintiff. Any communication/ correspondence on behalf of the plaintiff in absence of any subsequent acknowledgment by the defendant within the meaning of Section 18(1) of the Act is irrelevant.

20. Having gone through the pleadings and the documents placed on record, this Court is of the considered opinion that the suit is time barred. Under these circumstances, there is a force in the submission of the learned Senior counsel for the defendant. The suit is clearly barred by limitation and in order to save cost of the parties and time of this Court, the same is rejected. No orders as to cost.

21. During the course of hearing, it is mentioned that Mr. Harish Malhotra, learned Senior Counsel appearing on behalf of defendant

has confirmed that his client is ready to refund the advance amount received from the plaintiff with reasonable interest fixed by the Court. The said suggestion/offer was not acceptable to the plaintiff. However, considering the overall facts and circumstances of the case and in interest of justice, in case the plaintiff is agreeable, he may request the defendant to refund the amount with three months, who would be entitled to receive the entire advance amount alongwith interest at 9% from the date of making of payment till date of receipt as suggest by the learned senior counsel. The said amount shall be remitted to the plaintiff within the period of one month from the date of receipt of the plaintiff's request.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 24, 2014