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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on : March 06, 2014

Judgment Pronounced on : March 19, 2014

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RFA(OS)122/2013

K.L.KATYAL

..Appellant

Represented by: Mr.M.S.Vinaik, Advocate

versus

DR. PANKAJ KUMAR

....Respondent

Represented by: Mr.Pradeep Kumar Arya with
Mr.Rajesh Kalra, Mr.Narendra
Chaudhary, Mr.Kamal Chabra and
Mr.Siddhant Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present Regular First Appeal is filed challenging the judgment and decree of the learned Single Judge of this Court dated September 03, 2013 passing a decree in favour of the respondent for specific performance of Agreement to Sell dated February 19, 2005.

2. The respondent filed the present suit stating that the appellant is the absolute owner of Flat bearing C-1A/98-A, Pankha Road, Janakpuri, New Delhi-110058. It is stated that the parties entered into an Agreement to Sell on February 19, 2005 where it was agreed that the appellant would sell the said flat to the respondent for a total sale consideration of ₹20,25,000/- (Rupees Twenty Lac Fifty Thousand). The respondent is stated to have paid

a sum of ₹1,00,000/- (Rupees one lac only) in advance/earnest money. An Agreement to Sell was executed. The defendant acknowledged receipt of the advance by putting his signature on the revenue stamp on the Agreement. It was agreed that the appellant would execute the sale-deed before June 30, 2005. It is further averred that in second week of March, 2005 the appellant approached the respondent with a request to complete the deal within March, 2005. Respondent is stated to have applied for a loan with HDFC Bank on March 20, 2005 for a sum of ₹16,00,000/- (Rupees sixteen lacs only) in order to make the balance sale consideration. The bank sanctioned the loan and issued Final Disbursement Advice dated March 30, 2005. Hence, it is averred that the respondent was ready with the balance sale consideration in March, 2005 itself. The respondent also states to have purchased stamp paper for execution of the sale-deed for a sum of ₹1,40,000/- on March 29, 2005. It is averred that the respondent requested the appellant to complete the transaction but the appellant kept avoiding and demanded an additional sum of ₹5,00,000/- (Rupees five lacs only) as property prices had allegedly risen. A legal notice was served by the respondent on the appellant dated May 18, 2005 calling upon the appellant to perform his part of the contract. Counsel for the appellant sent a reply stating that he does not possess a copy of the Agreement dated February 19, 2005 and as such is not in a position to reply to the notice sent by the respondent. The respondent sent a rejoinder notice on June 03, 2005 to which no reply came. As the appellant took no steps, the present suit was filed.

3. The appellant filed his written statement. He stated that the Agreement to Sell is a manipulated and forged document. It is urged that as the appellant was in urgent need of a loan of ₹20,000/-. Hence he

approached Westend Estates's proprietor Mr.Sanjoo Anand for the loan. The said Mr.Sanjoo Anand provided the loan to the appellant @ 24% per annum and while giving the loan, seeking identity proof of the appellant, asked for ownership proof of the immovable property. The appellant showed him the original documents of the flat, photocopies of which were kept by the said Mr.Sanjoo Anand. The appellant claimed that he only executed a promissory note which was formatted/submitted on the letter head of Westend Estates with the same design as the alleged Agreement to Sell. It is averred that the said Sanjoo Anand has manipulated the promissory note to an alleged Agreement to Sell. It is averred that the appellant had never met the respondent. The receipt of notice dated May 18, 2005 sent by the respondent is admitted. It is further averred that the respondent is only manipulating facts inasmuch as even the letter from HDFC Bank enclosed by the respondent is addressed to one Mr.Pankaj Kumar with the address of Khel Gaon Marg, New Delhi and not to the titled name and address of the respondent. It is further urged that it is surprising that HDFC Bank has sanctioned a loan without NOC from the owner of the house. It is further urged that the stamp duty paper of ₹1,40,000/- (Rupees one lac forty thousand) allegedly paid by the respondent is not based on correct calculation and the contention about purchase of the same is a manipulated story.

4. Based on the above pleadings, issues were framed by the Court on July 06, 2006 as follows:-

- “1. Whether there was an agreement for sale and purchase of suit property executed between the plaintiff and the defendant?
(OPP)*
- 2. To what relief, if any, the Plaintiff is entitled?(OPP)”*

5. Parties filed their evidence. The respondent appeared himself as PW-1

and also led the evidence of Mr.Sanjoo Anand, Proprietor of Westend Estates as PW-2 and his father in-law, Mr.B.R.Jagia, a witness to the Agreement to Sell dated February 19, 2005 as PW-3. The respondent has exhibited 19 documents being Ex.P-1 to P-19. The appellant has examined himself as DW-1.

6. The impugned order records a finding that the appellant is not trustworthy and appears to be shifting his stand. The contention of the appellant that the Agreement to Sell (Ex.P-2) is a forged and fabricated document was rejected as unsubstantiated. The contention of the appellant that he signed blank letter head of Westend Estates and he thought he was signing a promissory note was rejected. It was further held that based on evidence and the documents placed on record there was an Agreement to Sell in relation to the suit property between the parties and the respondent was ready and willing to perform his part of the contract. The suit was hence decreed in favour of the respondent and the appellant was directed to execute the necessary sale-deed in favour of the respondent on receipt of the balance consideration of ₹19,25,000/- (Rupees nineteen lac twenty five thousand only).

7. Learned counsel for the appellant has submitted that the impugned order has erroneously passed the decree. He has made four basic submissions challenging the impugned order. He firstly submits that the papers of the bank produced by the respondent shows sanction of loan but do not specify any property. Hence the sanction of the loan is of no consequence. Secondly, he submits that the stamp duty allegedly purchased by the respondent is not in the name of the purchaser. He further submits that the stamp paper is of inadequate value as compared to the agreed sale price consideration as the stamp paper has to be paid for a value of 6% of

the sale consideration or 8% of the sale consideration. The value of the stamp paper in the present case as allegedly bought by the respondent fits neither of these descriptions. Hence, he states that the stamp paper pertains to a different sale transaction. It is thirdly submitted that the Agreement to Sell dated February 19, 2005 is a manipulated and forged document as the appellant had only signed at the bottom of the said document and written his address in his hand writing. The impression given to the appellant was that this was a promissory note and that is why he was made to sign on a revenue receipt. Rest of the document was blank and has been filled up mischievously to deceive and cheat the appellant. It is fourthly submitted that the agreed price consideration as per Agreement dated February 19, 2005 is inadequate and the said Agreement to Sell is invalid on the face of it.

8. Learned counsel for the appellant has relied upon 135(2006) DLT 190 Amarjeet Singh vs. Shardha Obhrai and 63(1996) DLT 52 M/s. Aggarwal Hotels (P) Ltd. Vs. M/s. Pocus Properties (P) Ltd. where the Court held that the stipulation and terms of the contract have to be certain and the parties must have consensus ad idem before specific performance of a contract can be ordered.

9. Learned counsel for the respondent has submitted that there is no merit in the contentions of the appellant. He points out that the home loan agreement (Ex.P-6) at internal page 21 has the address of the said flat. He further points out that there was a calculation mistake on the part of the person who purchased the stamp paper on behalf of the respondent. Any shortfall could have been easily paid for. He further submits that Agreement to Sell dated February 19, 2005 is a valid agreement. Both the witnesses to the agreement have in their testimony confirmed valid execution of the agreement.

10. In our view, having gone through the record and the evidence led by the parties there is no merit in the submission and contentions of the learned counsel for the appellant.

11. Regarding the first contention of the appellant, namely, that the papers of the bank produced do not show the property for which the loan has been sanctioned is obviously a contention without merits as is apparent from a perusal of the last page of the home loan agreement being Ex.P-6. The address of the flat is clearly mentioned in the Loan Agreement.

12. Regarding the second contention, namely, that the stamp paper is not in the name of the respondent, reference may be had to the treasury receipt and the photo copy of stamp paper placed on record. Ex.P-7 is the treasury challan which shows that the stamp paper is being bought for and on behalf of Dr.Pankaj Kumar and others(i.e. the respondent). Similarly, Ex.P-8 is the photocopy of the stamp papers bought. Perusal of the rear side of the first stamp paper shows the name “Dr.Pankaj Kumar and others” clearly written. The stamp paper is obviously bought by the respondent as is apparent. There is clearly no merit in the submission of the learned counsel for the appellant in this regard.

13. The further argument of learned counsel for the appellant, namely, that the stamp paper bought by the respondent is not of the correct denomination inasmuch as it ought to have been either of 6% or 8% of the sale consideration also has no merits. Six per cent of the sale consideration of ₹20,25,000/- comes to ₹1,21,500/- and eight per cent would come to ₹1,62,000/-. The stamp papers are of the value of ₹1,40,000/-. In case of error in computation of the value of the stamp paper, the same is of insignificant amount and same could have been easily rectified had the appellant expressed his willingness to complete the sale transaction. The

respondent in his cross-examination has explained that there was a calculation error. This error in computation also does not in any way support the contention of the appellant that this stamp paper was bought for some other transaction. However, the contention of the appellant that this stamp paper pertained to another property has not been put to PW-1 in his cross-examination. The contention is wholly without any merits.

14. The third argument of learned counsel for the appellant, namely, that the appellant never signed an Agreement to Sell, also cannot be accepted. There are various reasons which persuade us to reach this conclusion.

15. Firstly, the Agreement to Sell (Ex.P-2) even as per the appellant is admittedly signed at the bottom by the appellant and he has in his own handwriting put his address. The submission of the appellant is that he signed a promissory note. If for a moment we ignore the hand written portion of the said document, the printed portion of the said document clearly narrates regarding sale of a property. Even assuming the same was executed by the appellant in blank, it cannot be believed that the appellant would not be aware of the contents of the said document. He admits that he knows a little bit of English. He has retired from Army Headquarters from a post equal to Section Officer. In the background of these facts, the said argument of having signed the blank document thinking it to be a promissory note cannot be believed.

16. Secondly, both the witnesses to the Agreement to Sell, namely, PW-2 and PW-3 have deposed that the appellant signed the Agreement to Sell in their presence. There is nothing in their cross-examination to disbelieve their testimony. PW-2 in his cross-examination on November 24, 2006 stated as follows:-

“Mr.Katyal, the defendant has signed and had written his address in his own handwriting on Ex.P-2, however, it is

correct that, other than that all entries on Ex.P-2 were made by me and not by Mr.Katyal. It is correct that Mr.Katyal is an old man. It is wrong to say that Mr.Katyal had signed Ex.P-2 believing the same to a promissory note and entries in the document were filled by me later on. Volunteer, Mr.Katyal was not such an old person as not to understand the dealing. It is wrong to say that I had put revenue stamp on Exd.P-2 deliberately to mislead Mr.Katyal, the defendant. It is correct that property prices has risen substantially since January, 2005. It is wrong to say that the suit property belonging to Mr.Katyal is now value at around ₹1 crore. It is also wrong to say that value of this property in February 2005 was around ₹75 lacs.”

17. PW-3 Mr.B.R.Jagia filed his evidence by way of Affidavit. He in his examination-in-chief states as follows:-

“That I say that through me the plaintiff agreed to purchase and the defendant agreed to sell the suit property on such terms and conditions which was mutually agreed upon and subsequently reduced into writing vide an Agreement to Sell dated 19.2.2005 executed between the parties. It is submitted that the defendant signed the said Agreement to Sell at Point ‘A’ and the plaintiff signed at point ‘D’ in my presence and in the presence of each other. I signed the said Agreement to Sell as witness at point ‘C’ and Sh.Sanjoo Anand Proprietor of Westend Estates appended his signature as the other witness at point ‘B’ respectively in my presence and in the presence of other parties to the said Agreement to Sell. The Original Agreement to Sell dated 19.2.2005 is exhibited as Ex.P-2.”

18. There is no cross-examination on this averment of the said witness.

19. Thirdly when the appellant learnt about the fact that the so called promissory note executed by him has been converted into an Agreement to Sell, as claimed, there was no worthwhile reaction by the appellant to have the said document cancelled. The respondent served a legal notice dated May 18, 2005 (Ex.P-10) on the appellant through counsel where it was

clearly stated that a deal for sale of the flat in question for a total consideration of ₹20,25,000/- (Rupees twenty lac twenty five thousand) was entered into by executing Agreement dated February 19, 2005 and that the appellant had received an advance of ₹1,00,000/-(Rupees one lac only). The appellant received the said legal notice. He sent reply dated May 21, 2005 through his counsel (Ex.P-16) simply stating that he does not have a copy of the so called agreement dated February 19, 2005 and in its absence is unable to take necessary action in the subject matter of the notice. The respondent sent a rejoinder notice dated June 03, 2005 (Ex.P-17) to the appellant to which there is no response. If the appellant had never executed an Agreement to Sell, on receipt of legal notice dated May 18, 2005 (Ex.P-10) one would expect him to take strong decisive action inasmuch as he had been duped, and a claim was being made on a valuable asset belonging to him. Instead a vague and evasive reply is sent on May 21, 2005 (Ex.P-16).

20. Further the relevant portion of the cross-examination of the appellant DW-1 dated January 23, 2008 in this regard may also be seen:-

“I had come to know about the fraud committed upon me within 10 days of my taking loan from Mr.Sanju Anand in January, 2005.

Q. What steps you have taken after you detected that the fraud has been played upon you after January, 2005 e.g. filing of any written complaint before any authority or complaint to any police agency or serving of any legal notice on your behalf to the plaintiff or any other information/complaint whatsoever being filed by you?

A. I have sent the letter through Mr.R.K.Singh, advocate which is already exhibited as Ex.P-1 (also marked Ex. P-16).

21. Lack of any proper reaction on the part of the appellant on knowledge of the alleged fraud done by the respondent clearly shows that there is no merit in his contentions.

22. Fourthly as per the version of the appellant he had taken a loan of ₹20,000/- (Rupees twenty thousand only) from Mr.Sanjoo Anand/PW-2. No evidence is led as to why he needed the loan, whether the appellant returned the said loan and other such details. In his cross-examination on January 23, 2008 on the issue of return of loan appellant DW-1 states as follows:-

“ I have not been provided the photocopy of Ex.P-2. I have sent the cheque of ₹20,000/- with interest to Mr.Sanju Anand but he has not accepted it and had returned it saying that I have sent a blank paper. I had sent a cheque of ₹24080/- to Mr.Anand of Indian Overseas Bank. Mr.Anand had kept the cheque but I think he has not encashed it. I had given the cheque to my son-in-law Mr.Girish Batra for sending it to Mr.Anand. I do not know by which courier company the cheque had been sent by my son-in-law. Some employee of my son in law had come to collect the cheque from me. I do not remember the name of the person who had come to collect the cheque from me.”

23. On the issue as to why he urgently needed ₹20,000/- in his cross-examination he states as follows:-

“I was in the need of ₹20,000/- as I had to pay to my relative. I do not remember the name of the relation with the person to whom I have to pay ₹20,000/- but he was from the side of my in-laws. My relative is residing in Surya Nagar, Ghaziabad, UP but I do not remember the correct address. I might be having ₹20,000/- in my bank accounts mentioned above by me but since I urgently required the money in night, I went to Mr.Sanju Anand for the loan. I had gone to the house of Mr.Sanju Anand at about 8 to 9 PM on that day. I returned the money to Mr.Sanju Anand by way of cheque in February, 2006.”

24. What follows from the above cross-examination? If the appellant had entered into a loan transaction there would have been an attempt to return the loan. There would have been an explanation why an urgent loan was

required overnight of ₹20,000/- especially keeping in view the fact that the appellant admits that his pension is ₹7,500/- (Rupees seven thousand five hundred only) per month.

25. In the light of the above evidence and documents there is only one view possible, namely, that the Agreement to Sell dated February 19, 2005 (Ex.P-2) has been validly executed. We concur with the view of the learned Single Judge regarding valid execution of Agreement to Sell dated February 19, 2005.

26. Regarding the last submission of learned counsel for the appellant regarding rise in the price of the suit property, no evidence in this regard has been led. In the absence of any evidence there is no basis to accept the said submission of the appellant.

27. The reliance of learned counsel for the appellant on Amarjeet Singh; Veluyudhan Sathyadas and M/s.Aggarwal Hotels (P) Ltd.(supra) is misplaced. In the case of M/s.Aggarwal Hotels (P) Ltd.(supra) the Court in paragraph 5 held as follows:-

“The four ingredients necessary to make an agreement to sell are (i) particulars of consideration (ii) certainty as to party i.e. the vendor and the vendee (iii) certainty as to the property to be sold; and (iv) certainty as to other terms relate to probable cost of conveyance to be borne by the parties, time, etc. If the ingredients are lacking in the agreement, the obligations contemplated under Section 16 for specific performance for immoveable property would not arise. It is in this background that the receipt dated June 17, 1995 has to be examined.

28. In the facts of the present case we have already held that there exists a valid Agreement to Sell inasmuch as consideration, parties and the identification of the property to be sold is determinate.

29. In view of the above we upheld the impugned order of the learned

Single Judge. Appeal is dismissed. No order as to costs.

**JAYANT NATH
(JUDGE)**

**PRADEEP NANDRAJOG
(JUDGE)**

**MARCH 19, 2014
n/rb**