

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

+ **RFA No. 353/2018**

% **Reserved on: 3rd May, 2018**
Pronounced on: 7th May, 2018

NEELAM CHHABRA Appellant
Through: Mr. Jinendra Jain and Ms.
Aastha Chopra, Jain,
versus

RASHMI GUPTA & ANR. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the Trial Court dated 23.12.2017 by which the trial court has dismissed the suit for specific performance filed by the appellant/plaintiff with respect to the Agreement to Sell dated 27.2.2004 for half portion of the property bearing no. F-36, DSIDC Industrial Complex, Rohtak Road, New Delhi-110041. Though trial court has dismissed the suit for specific performance but the trial court has granted a money decree to the appellant/plaintiff for a sum of

Rs.14,50,000/- along with interest at 6% per annum as this was the amount paid by the appellant/plaintiff to the respondent no.1/defendant no.1 under the agreement to sell.

2. The facts of the case are that the appellant/plaintiff and the respondent no.1/defendant no.1 entered into the subject Agreement to Sell dated 27.2.2004 for the suit property for a total sale consideration of Rs.44,50,000/-. An amount of Rs.7,50,000/- was paid by the appellant/plaintiff to the respondent no.1/defendant no.1 at the time of entering into the agreement to sell and further amounts totaling to Rs.7,00,000/- were paid by the appellant/plaintiff to the respondent no.1/defendant no.1 in March,2004 thereby totaling to a sum of Rs.14,50,000/- paid by the appellant/plaintiff to the respondent no.1/defendant no.1. Appellant/plaintiff claimed that respondent no.1/defendant no.1 committed breach and did not execute the sale deed of the suit property in favour of the appellant/plaintiff in spite of the fact that appellant/plaintiff had issued various letters and notices. Appellant/plaintiff pleaded to have given a notice dated 19.10.2004 in this regard and on 27.10.2004 appellant/plaintiff claimed to have reached the office of the Sub-Registrar with the stamp papers and the

pay orders for the next installments of 25% of Rs.12 lacs which were to be paid by the respondent no.1/defendant no.1 to DSIDC but the respondent no.1/defendant no.1 did not turn up. Appellant/plaintiff thereafter pleads to have sent a legal notice dated 8.11.2004 and the respondent no.1/defendant no.1 is pleaded to have sent notice to the appellant/plaintiff dated 25.11.2004 and which was replied by the appellant/plaintiff vide her reply dated 11.12.2004. Appellant/plaintiff also pleaded that DSIDC, which was to transfer the suit property to respondent no.1/defendant no.1, was informed of the aforesaid facts by the letter dated 7.12.2004. Since as per the appellant/plaintiff the respondent no.1/defendant no.1 was threatening to sell the suit property, the subject suit was filed.

3. The suit was opposed by the respondent nos.1 and 2/defendant nos. 1 and 2. Respondent no.1/defendant no.1 is the wife of the respondent no.2/defendant no.2. It was pleaded in the written statement that appellant/plaintiff is guilty of making interpolation in the Agreement to Sell dated 27.2.2004 (Ex.PW1/4) because the expression “within 4 months” in para 2 of the agreement to sell of payment having to be made by the appellant/plaintiff to the respondent

no.1/defendant no.1 was illegally scored out and the actual facts are that the appellant/plaintiff had to complete the transaction by making payment of the balance amount on or before 27.6.2004 but the appellant/plaintiff failed to complete the transaction as appellant/plaintiff did not have the balance sale consideration. It was pleaded that respondent no.1/defendant no.1 wrote her letters dated 2.6.2004 and 15.6.2004 to the appellant/plaintiff to pay the balance amount before 27.6.2004, but in spite of receipt of these letters the appellant/plaintiff failed to complete the transaction before the last due date of 27.6.2004. It was pleaded that the appellant/plaintiff was not ready and willing to perform part of the agreement as she could not arrange the balance sale consideration. Suit was therefore prayed to be dismissed.

4. After pleadings were complete, the trial court framed the following issues:-

- “(i) Whether the plaintiff has not made unauthorised cuttings in the agreements to sell dated 27.2.2004, in that, has cut off the words ‘or within 4 months’ in clause 2 of the agreement? OPP
- (ii) Whether the plaintiff was always ready and willing to perform her obligations under the agreement to sell dated 27.2.2004? OPP
- (iii) Whether the plaintiff is entitled to a decree for specific performance of agreement to sell dated 27.2.2004? OPP
- (iv) Relief.”

5. The first issue to be decided is as to whether the appellant/plaintiff had scored out words “within 4 months” as found in para 2 of the subject agreement to sell dated 27.2.2004. A reading of the subject agreement to sell shows that these words have indeed been scored out and there are no signatures of the respondent no.1/defendant no.1 with respect to this erasure. The effect of erasing of the words “within 4 months” is for the benefit of the appellant/plaintiff because if these words were there in the agreement to sell then the appellant/plaintiff had to complete the transaction by 27.6.2004 by making payment of the balance sale consideration, and the case of the respondent no.1/defendant no.1 was that the appellant/plaintiff did not have the arrangement to pay the balance sale consideration and therefore illegally the words “within 4 months” were scored out. I completely agree with the stand of the respondent no.1/defendant no.1 as also findings in this regard given by the trial court in paras 7 to 9 of the impugned judgment because there is no evidence which was led by the appellant/plaintiff that the words “within 4 months” were deleted with the consent of the respondent/defendant no.1 including because of the fact that if the

scoring out was with consent of respondent no.1/defendant no.1 then why the cutting/erasure was not got initialed from the respondent no.1/defendant no.1. To the aforesaid aspects I may only add that since the words “within 4 months” were very important expressions in the context of performance of the subject agreement to sell then when such extremely important words were scored out allegedly with consent, then there are no signatures of the respondent no.1/defendant no.1 confirming the deletion of these words because these words were illegally scored off by the appellant /plaintiff.

6. Though learned counsel for the appellant/plaintiff vainly tried to persuade this Court that the words “within 4 months” were scored out in terms of the consent of the parties, however, in view of what is discussed above I cannot agree to the arguments urged by the appellant/plaintiff in this regard.

7. On the aspect as to the appellant/plaintiff being or not being guilty of breach of contract, it is found that the trial court has rightly held the appellant/plaintiff as guilty of breach of contract because the last date for payment of balance sale consideration was 27.6.2004 and admittedly by 27.6.2004 appellant/plaintiff did not have

arrangement nor paid the balance sale consideration of Rs.30 lacs to the respondent no.1/defendant no.1. It has already been held above that the appellant/plaintiff has illegally scored out the words “within 4 months” appearing in para 2 of the subject agreement to sell and once that is so, the contention of the appellant/plaintiff that appellant/plaintiff only had to pay to the respondent no.1/defendant no.1 when demands were raised by DSIDC for installment payments, is an argument which is false and is therefore rejected. It is therefore the appellant/plaintiff who is guilty of breach of contract in failing to complete the sale transaction within prescribed time.

8. Trial court has also rightly held that appellant/plaintiff is guilty of not complying with the requirements of the readiness and willingness as per Section 16(c) of the Specific Relief Act 1963 because the appellant/plaintiff had admittedly led no documentary evidence whatsoever of her income tax returns or her bank accounts or other proof of having properties (movable or immovable) so as to make payment of the balance sale consideration of Rs30 lacs. Once no documentary evidence is led by the appellant/plaintiff with respect to the financial capacity to pay the balance sale consideration, then the

trial court was justified in holding the appellant/plaintiff as not being ready and willing to perform her part of the contract. The expression 'readiness' refers to financial capacity and it is not necessary that financial capacity has to be proved only on the date of performance because the requirement of readiness i.e financial capacity has to be proved at all points of time till the disposal of the suit and the undisputed position on record is that the appellant/plaintiff has led no documentary evidence to prove the capacity to pay the balance sale consideration of Rs.30 lacs.

9. Learned counsel for the appellant/plaintiff argued that appellant/plaintiff had brought her pass book at the time of her cross-examination on 11.2.2011, however, admittedly such pass book had not been filed and proved in appellant/plaintiff's evidence, and that too even after stating of bringing of the pass book during her cross-examination. The appellant/plaintiff did not move any application to file and prove on record the pass book before the trial court and it is very strange even before this Court there is no application filed under Order XLI Rule 27 CPC for additional evidence to be led with respect to bringing on record this pass book. Even assuming this pass book

had to be considered as evidence of availability of monies with the appellant/plaintiff, I put a query to counsel for the appellant/plaintiff that what was the amount in this pass book of the appellant/plaintiff, and to which it is answered that there was available sum of Rs.20 lacs with the appellant/plaintiff as per this pass book. Even assuming, for the sake of argument, that the pass book contained a credit of Rs.20 lacs in favour of the appellant/plaintiff, though there is nothing to justify such a position, yet even if this aspect is taken as correct, yet there still remains a gap of Rs.10 lacs towards the balance sale consideration and there is therefore no financial capacity of the appellant/plaintiff shown and proved to pay the total balance sale consideration of Rs.30 lacs.

10. In view of the aforesaid discussion, I do not find any merit in the appeal and which is dismissed with costs of Rs.25,000/- and which shall be deposited by the appellant/plaintiff within a period of four weeks from today with the website of www.bharatkeveer.gov.in.

MAY 7, 2018/ib

VALMIKI J. MEHTA, J