



2024:DHC:5884-DB



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 23rd July, 2024

Pronounced on: 8th August, 2024

+ **EFA(OS) 8/2019 & CM APPL. 28302/2019**

MF BUILDCON PVT LTD

..... Appellant

Through: Mr Sanjiv Kakra, Sr. Advocate with
Mr A. Rehman, Advocate.

versus

ANJALI

..... Respondent

Through: Mr Roshan Santhalia, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

AMIT BANSAL, J.

1. The present appeal has been filed on behalf of the Appellant/Decree Holder against the impugned judgment dated 2nd May 2019 passed by the learned Single Judge in EX.P. 03/2019.

2. By way of the impugned judgment, the execution petition filed by the Appellant/Decree Holder seeking execution of the decree dated 15th May 2018 (*in terms of the Settlement Agreement dated 3rd May 2018*) in CS(OS) No. 603/2017 against the Respondent/Judgment Debtor, came to be dismissed.

BRIEF FACTS

3. Brief facts relevant for deciding the present appeal are set out hereinafter:

3.1 The Appellant/Decree Holder entered into an Agreement to Sell dated 9th June 2014 with the Respondent/Judgment Debtor for the purchase of

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immovable property *i.e.*, Ground floor bearing no.8980 and First Floor, Second Floor and Third Floor bearing no.8981, Naya Mohalla, Pul Bangash, Delhi (hereinafter collectively referred to as the ‘Suit Property’).

3.2 Disputes arose between the parties which led to the Appellant filing a suit for specific performance bearing CS(OS) No.603/2017 before this Court.

3.3 The parties were referred to mediation before the Delhi High Court Mediation and Conciliation Centre (‘DHCMC’) and the parties arrived at a settlement in the mediation proceedings. As per the terms of the Settlement Agreement dated 3rd May 2018, the Appellant was to pay a sum of Rs.1,30,00,000/- for the purchase of the Suit Property in the manner described therein.

3.4. As on the date of the Settlement Agreement (*i.e.*, 3rd May 2018), the Decree Holder had already transferred a sum of Rs.67,00,000/- in favour of the Respondent. It was agreed that the balance amount of Rs.63,00,000/- shall be paid ‘*on or before 30th June 2018*’.

3.5 In terms of the aforesaid Settlement Agreement, the Single Judge passed a decree dated 15th May 2018 in CS(OS) No.603/2017.

3.6 The Appellant paid a sum of Rs.30,00,000/- on 5th June 2018. However, it failed to pay the balance sale consideration of Rs.33,00,000/- by 30th June 2018.

3.7 The Appellant filed an execution petition *i.e.*, EX.P. 03/2019 on 15th January 2019 before the learned Single Judge, seeking execution of the Decree and a direction against the Respondent for execution of the Agreement to Sell.

4. The learned Single Judge, *via* the impugned judgment dated 2nd May 2019, dismissed the execution petition and modified the decree passed in

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CS(OS) No. 603/2017 by rescinding the Settlement Agreement as well as the Agreement to Sell. Further, the Appellant was directed to hand over vacant peaceful possession of the Suit Property. The operative portion of the judgment passed by the Single Judge has been set out below:

“34. The suit file be called for and the decree under execution is ordered to stand modified, by rescinding the Agreement to Sell of which specific performance was sought as well as the Settlement Agreement dated 3 May, 2018 and the decree for specific performance is substituted by a decree of:-

- (i) rescission of the Settlement Agreement dated 3rd May, 2018 and the Agreement to Sell dated 9th June, 2014 of which specific performance was sought;*
- (ii) mandatory injunction directing the decree holder to put the judgment debtor into vacant peaceful physical possession of the first, second and third floors of Property No.8981, Naya Mohalla, Pul Bangash, Delhi; and,*
- (iii) mandatory injunction directing the judgment debtor to, at the time of delivery of possession by the decree holder of the first, second and third floors of Property No.8981, Naya Mohalla, Pul Bangash, Delhi, out of the total consideration received till now of Rs.97 lacs, refund a sum of Rs.87 lacs, with Rs.10 lacs being deducted towards- forfeiture for breach of contract and costs of litigation.”*

5. Aggrieved by the aforesaid judgment, the Appellant/Decree Holder has filed the present appeal.

6. Notice in the present appeal was issued on 4th July 2019 and the operation of the impugned judgement was stayed.

SUBMISSIONS ON BEHALF OF THE APPELLANT

7. Mr Sanjiv Kakra, learned Senior counsel appearing on behalf of the Appellant/Decree Holder, has made the following submissions:

7.1 The Appellant had always intended to honour the Settlement Agreement and the Decree passed in CS(OS) No. 603/2017. This is illustrated



by the fact that the Appellant purchased the stamp duty for the execution of the sale deed amounting to Rs. 5,28,000/- and Rs.3,45,000/- on 1st June 2018.

7.2 The Appellant has been ready and willing to pay the balance amount of Rs.33,00,000/-. Despite repeated requests made *via* SMS, the Respondent did not come forward to either receive the balance consideration or to execute the registered sale documents in favour of the Appellant.

7.3 Section 28 of the Specific Relief Act, 1963 gives discretion to a court to extend the timeline for a purchaser to make payment in terms of the decree. In this regard, reliance has been placed on ***Chanda (Dead) through LRs v. Rattni & Anr***, (2007) 14 SCC 26 and ***Joseph George & Ors. v. Chacko Thomas & Ors.***, 1991 SCC OnLine Ker 120.

7.4 The Appellant has already deposited the balance consideration before the execution court. Once the balance sale consideration was deposited by the Appellant before the execution court, the learned Single Judge ought to have exercised discretion and extended the time period for making payment under Section 28 of the Specific Relief Act, 1963.

7.5 The learned Single Judge has returned with an incorrect finding with regard to the possession of the Suit Property being taken forcefully. The possession of the Suit Property was handed over willingly by the Respondent to the Appellant on 5th June 2018, upon receiving part payment of Rs.30,00,000/-.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

8. *Per contra*, the learned counsel appearing on behalf of the Respondent/Judgment Debtor, has made the following submissions in support of the impugned judgment:

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8.1 The Appellant has failed to place any document on record to show that it had the balance amount of Rs.33,00,000/- before the stipulated date of payment i.e., 'on or before 30th June 2018'. Therefore, if the Appellant itself has violated the terms of the Settlement Agreement, it cannot seek execution of the same.

8.2 On the date when EX.P. 03/2019 was filed i.e., 15th January 2019, the Appellant had not deposited the balance sale consideration. It was only after the order of the execution court on 17th January 2019, the balance amount was deposited by the Appellant on 21st January 2019.

8.3 The Appellant forcefully took possession of the Suit Property. As per the Settlement Agreement, the Appellant was not entitled to take possession of the Suit Property until the entire sale consideration was paid.

8.4 Taking into account the conduct of the Appellant, the learned Single Judge has rightly not exercised discretion under Section 28 of the Specific Relief Act, 1963, by not extending the timeline for payment.

ANALYSIS AND FINDINGS

9. We have heard the parties and examined the material on record.

10. To appreciate rival submissions, it is pertinent to refer to the Settlement Agreement dated 3rd May 2018 arrived between the parties before the DHCMC. The relevant extracts from the Settlement Agreement are set out below:

“AND WHEREAS mediation session was held with the mediator on 03.05.2018 and the parties have, with the assistance of the Mediator and their respective counsels, voluntarily arrived at an amicable solution resolving the above mentioned disputes and differences.

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AND WHEREAS the parties hereto confirm and declare that they have voluntarily and of their own free will without any force or coercion etc. arrived at this Settlement Agreement in the presence of the Mediator.

AND WHEREAS the following settlement has been arrived at between the Parties hereto:

1. **That it is agreed by both the parties that the total sale consideration of properties will be Rs.130 Lakhs. The First Party has already paid a sum of Rs.50 Lakhs to the Second Party which was duly acknowledged and received by her.**
2. **That the First Party has paid a further amount of Rs.17 Lakhs on 03rd May 2018 to the Second Party vide Cheque No.000020 dated 02.05.2018 drawn on HDFC Bank, Sadar Bazar, Delhi.**
3. **That the balance amount of Rs.63 Lakhs shall be paid by the First Party to the Second Party on or before 30th June, 2018 i.e. the last date agreed for execution of Sale Deed.**
4. **That the Second Party will execute the Sale Deed in favour of the First Party and the registration of the same will be carried out before the concerned Sub-Registrar. The Second Party will hand over possession of the said properties to the First Party on "as is where is basis" and simultaneously receive the remaining sale consideration for the said properties.**

...

That the parties undertake that they are bound by this Settlement Agreement and further undertake to abide by the terms and conditions set out in the agreement and not to dispute the same hereinafter in future."

[Emphasis is ours]

11. Section 89 of the Civil Procedure Code, 1908 ('CPC') was inserted by the legislature in the CPC with effect from 1st July 2002. Section 89 of the CPC, *inter-alia*, empowers the Court to refer the parties to mediation, in order to explore the possibility of a settlement.

12. In this regard, Mediation and Conciliation Rules, 2004 have been notified by this Court on 11th August 2005 which provide that, once parties



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arrive at an agreement in the mediation proceedings, it has to be reduced into writing and signed by the parties and their counsels. Thereafter, the said agreement is signed and sent by the concerned mediator to the court where the case is pending. On the basis of the said agreement and upon satisfaction of the court that the parties have settled the dispute, the court would pass a decree thereon. The Settlement Agreement arrived at between the parties before the DHCMC, which is a court-annexed mediation centre, after getting the imprimatur of the Court, would have a certain sanctity attached to it.

13. A Coordinate Bench of this Court in ***Naresh Kumar v. Ashok Arora***, MANU/DE/9778/2007, has held that if a party is permitted to backtrack from a mediated settlement, it would defeat the very objective behind Section 89 of CPC. Therefore, if pleas, wherein the parties backtrack from a settlement agreement are sustained, the sanctity and purpose of amicable settlement would stand totally eroded.

14. In our opinion, once a settlement has been arrived in mediation proceedings, duly signed by both parties and their representatives and a decree has been passed by the Court on the basis of the aforesaid settlement, parties cannot be permitted to deviate from the terms of a decree passed by the Court, save in exceptional circumstances. If this is permitted, the entire sanctity of the mediation process would be undermined. The facts and circumstances obtaining in this case would show it does not fall in the genre of exceptional circumstances.

15. In the present case, a plain reading of Clause 3 of the Settlement Agreement would demonstrate that the entire sale consideration was to be paid by the Appellant to the Respondent '*on or before 30th June 2018*'. It is

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an admitted position that the Appellant/Decree Holder has failed to comply with the same.

16. The Appellant has sought to argue that it had tried to contact the Respondent with regard to making the balance payment. However, there was no response on behalf of the Respondent, as she was in America. Therefore, the balance payment could not be made and the sale deed could not be executed.

17. The aforesaid submission has been rightly rejected by the learned Single Judge by holding that the Appellant has failed to place on record any bank statement or other document to show that it had the requisite balance in its bank account(s) before the due date i.e., 30th June 2018 so as to make the balance payment. Admittedly, in terms of the Settlement Agreement, the balance amount of Rs.63,00,000/- was to be paid by the Appellant to the Respondent on or before 30th June 2018. Out of the aforesaid balance amount, a sum of Rs.30,00,000/- was paid by the appellant on 5th June 2018 and the remaining amount of Rs.33,00,000/- remained unpaid even up until the date when the execution petition was filed. Significantly, even thereafter this amount of Rs.33,00,000/- was not paid by the Appellant of its own volition. This amount was only paid pursuant to the order passed by this Court on 17th January 2019 in execution proceedings, the relevant extracts of which have been set out in the later part of this judgment.

18. Next, the Appellant contends that despite repeated requests made *via* SMS, the Respondent/Judgment Debtor has not come forward to either receive the balance consideration or to execute the registered sale documents in favour of the Appellant/Decree Holder. With regard to the aforesaid submission, the learned Single Judge concluded that there was nothing on

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record to show that the Appellant tried to contact the Respondent before the due date of 30th June 2018. The SMS/messages relied upon by the Decree Holder are of August 2018 [*Refer to Annexure A-6 to the present appeal*], much after the due date for making the payment.

19. In our opinion, the Appellant cannot, unilaterally, alter the terms of the Court Decree based on a Mediated Settlement Agreement between the parties. If the Appellant was in financial difficulty and required more time to pay the balance amount, the proper course of action would have been to file an appropriate application seeking additional time before the concerned court which had passed the decree. Admittedly, this was not done by the Appellant. The Appellant cannot contend that merely because the balance amount of Rs.33,00,000/- was deposited by him at a belated stage, the delay would stand condoned or that the decree would stand satisfied.

20. The Appellant further seeks to contend that the possession of the Suit Property was willingly handed over to him by the respondent on 5th June 2018, upon receiving the sum of Rs.30,00,000/-.

21. In this behalf, the learned Single Judge notes that had the possession been voluntarily given by the Respondent to the Appellant, there would have been some document evidencing the same. In fact, the learned Single Judge goes on to note that after obtaining forcible possession, the Appellant tried to obtain an *ex-parte ad interim* order, in the execution proceedings to protect its unauthorized possession. The observations of the learned Single Judge in this regard, as captured in the order dated 17th January 2019, are set out below:

“6. The senior counsel for the decree holder also seeks interim order of stay of dispossession of the decree holder from the property, again contending that the factum of the decree holder being in possession is pleaded in the Execution Petition.

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7. However, a perusal of the Settlement Agreement in terms whereof the decree was passed shows the same to be recoding in Clause 4 thereof that the possession was still to be delivered by the judgment debtor on “as is where is basis”, simultaneously with the receipt of the remaining sale consideration. Admittedly, the remaining sale consideration of Rs.33 lakhs has not been paid. Thus, the plea of possession does not inspire confidence.

8. Subject to the decree holder depositing the admitted balance sale consideration of Rs.33 lakhs in this Court within one week as sought, issue notice to the judgment debtor by all modes including dasti and electronic returnable on 28th March, 2019.”

22. We tend to agree with the aforesaid observations made by the learned Single Judge. It is hard to believe that the Respondent would have handed over possession of the Suit Property to the Appellant without receiving the entire sale consideration or without any document(s) evidencing the handover of possession.

23. Lastly, the Appellant seeks to contend that upon payment of the remaining amount of Rs.33,00,000/- before the execution court, the learned Single Judge should have exercised discretion under Section 28 of the Specific Relief Act, 1963.

24. Section 28 of the Specific Relief Act, 1963 stipulates that a Judgment Debtor can file an application for rescission of a contract or for opposing the execution of a decree, on the ground of default of payment of balance consideration within a stipulated period of time. It also gives discretion to the Court to extend the timelines for the purchaser to make the payments due under the decree.

25. In **Chanda** (supra), the Supreme Court has held that Section 28 of the Specific Relief Act, 1963 enables the court to extend time in order to execute/enforce a decree in spite of the expiry of the period of deposit. Mere



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failure to deposit need not result in the rescission of a contract. A similar view has been taken by the High Court of Kerela in **Joseph George** (supra).

26. There cannot be any dispute with the aforesaid proposition of law. However, the issue that arises for consideration in the present case is, whether the learned Single Judge had correctly exercised his discretion in not extending the time period for making the deposit. Taking note of the conduct of the Appellant as highlighted, the learned Single Judge held that the Appellant would be disentitled to any discretion or equity from the Court.

27. We are in complete agreement with the findings of the learned Single Judge that this is not a case where the discretion under Section 28 of the Specific Relief Act, 1963 should have been exercised in favour of the Appellant, keeping in mind the conduct of the Appellant in obtaining forceful possession of the Suit Property.

28. In view of the discussion above, we do not find any infirmity in the judgment passed by the learned Single Judge. Accordingly, the present appeal is dismissed.

29. All pending applications stand disposed of.

**AMIT BANSAL
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

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