

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

%

Judgment Reserved on: 27th January, 2015
Judgment Delivered on: 9th February, 2015

+ **FAO(OS) 37/2015 and CM No. 1281/2015 (stay)**

RAJNI JAIN & ANR.

....Appellants

versus

PARAG JAIN

....Respondent

Advocates who appeared in this case:

For the Appellants: Mr K.K Rai, Senior Advocate with Mr P.K Mishra,
Advocate.

For the Respondent: None.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. The Appellants have filed the present appeal impugning the order dated 17.11.2014 whereby the application of the Appellants under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the plaint has been dismissed.

2. The Respondent (Plaintiff) before the trial court filed a suit for specific performance, declaration, mandatory and permanent injunction in respect of property E-142, Preet Vihar, Delhi-92.

3. It is contended by the Respondent (Plaintiff) in the Plaint, that the Appellant No. 1 (Defendant No. 1) is the owner of the suit property and the Appellants (Defendant Nos. 1 and 2) had approached the Respondent through a property dealer for sale of the said property.

4. It is contended that an Agreement to Sell was executed between the parties on 08.02.2013 for a total sale consideration of Rs. 3,15,00,000/-. Rs.35,00,000/- in cash and Rs.25,00,000/- by cheque was also handed over by the Respondent to the Appellants at the time of execution of the Agreement to Sell. As per the Respondent, another payment of Rs.65,00,000/- was to be made on or before 17.02.2013 and the balance sale consideration of Rs.1,90,00,000/- was to be paid by 15.04.2013 at the time of the registration of the sale deed.

5. As per the plaint, the Respondent was informed by his bankers that the cheque of Rs.25,00,000/- was returned due to technical

=====

objections raised as per the guidelines of the Reserve Bank of India (RBI) and, accordingly, the Respondent informed the Appellants about the said fact and the Appellants gave instructions that the amount of Rs.25,00,000/- be transferred through Real Time Gross Settlement (RTGS), the details of which were supplied by the Appellants. As per the plaint, the sum of Rs.25,00,000/- was transferred in the account of the Appellant No.1 through RTGS made by the Respondent, however, on enquiry on the next day, the Respondent came to know that the said amount was also returned due to technical objections raised as per the guidelines of RBI. Thereafter, another attempt was made to transfer the amount through RTGS. However, the same was once again returned due to technical error. As per the plaint, the Respondent had been trying to contact the Appellant No.1 to handover the sum of Rs.25,00,000/- in cash and the other sum of Rs.65,00,000/- as per the Agreement to Sell. But the Appellants avoided to receive the same.

6. As per the Plaint, the Respondent negotiated with the tenant of the first floor and took possession of the first floor. It is averred in the

=====

Plaint that the Appellants avoided/refused to perform their part of the contract and the Respondent has been ready and willing to perform his part of the contract and all arrangements of the money have been made and as such the suit has been filed for specific performance, mandatory and permanent injunction.

7. The Appellants had filed an application under Order VII Rule 11 contending that the plaint failed to disclose any cause of action. The contention of the Appellants is that there is no document signed between the Respondent and the Appellant No.1, who is admittedly the owner of the property. It is contended that the Appellant No.1 has not signed the Agreement to Sell dated 08.02.2013 and the space above the first party/seller is blank. It is submitted that since the Agreement to Sell is not signed by the owner, no specific performance of the sale can be granted.

8. The learned Senior Counsel for the Appellant has relied on the decision in the case **Church of Christ Charitable Trust and Educational Charitable Society vs. Ponniamman Educational Trust:**

=====

(2012) 8 SCC 706 to contend that as the Respondent had failed to produce the authority under which the husband (Appellant No. 2) had signed the Agreement to Sell on behalf of the Appellant No.1, the same amounts to non-compliance of Order VII Rule 14(2) and therefore the plaint ought to have been rejected.

9. The Supreme Court in **Bhau Ram v. Janak Singh and Ors.:** (2012) 8 SCC 701 has held as under:-

“15. The law has been settled by this Court in various decisions that while considering an application under Order 7 Rule 11 CPC, the court has to examine the averments in the plaint and the pleas taken by the defendant in the written statement would be irrelevant. [vide *C. Natrajan v. Ashim Bai* [(2007) 14 SCC 183] , *Ram Prakash Gupta v. Rajiv Kumar Gupta* [(2007) 10 SCC 59] , *Hardesh Ores (P) Ltd. v. Hede and Co.* [(2007) 5 SCC 614] , *Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express* [(2006) 3 SCC 100] , *Sopan Sukhdeo Sable v. Asstt. Charity Commr.* [(2004) 3 SCC 137] and *Saleem Bhai v. State of Maharashtra* [(2003) 1 SCC 557]]. The above view has been once again reiterated in the recent decision of this Court in *Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust* *(2012) 8 SCC 706.”

10. It is only where on examination of the plaint the court comes to a conclusion that the plaint does not disclose any cause of action, the same is liable to be rejected. While examining the case under Order 7 Rule 11, if the court comes to a conclusion that the plaint discloses a cause of action, the plaint cannot be rejected. The defence raised by the defendant in his Written Statement is irrelevant and is not to be considered. The court at that stage is neither called upon to examine whether the Plaintiffs would be able to eventually prove their case or not nor examine as to how much of the case the Plaintiffs would be able to prove.

11. The learned Single Judge in the impugned order has noticed the contention of the Respondent that the husband of the Appellant No.1, who is the Appellant No.2, has signed the Agreement to Sell dated 08.02.2013 on her behalf. The Appellant No.1 was fully aware of the sale transaction and the cheque in the sum of Rs.25,00,000/- was drawn in her favour, though the cheque is alleged to have been returned due to technical reasons and on account of RBI guidelines. The Respondent attempted to make the transfer of Rs.25,00,000/-

=====

through RTGS in the account of the Appellant No.1 though the payment could not be cleared.

12. In the facts of the present case, the Appellant No.2, who is the husband of the Appellant No.1, does not dispute the signatures on the Agreement to Sell. However, he submits that the same has been signed only as a witness. The Agreement clearly stipulates that a sum of Rs.35,00,000/- has been paid in cash. It is not denied that the cheque of Rs.25,00,000/- was initially deposited in the account of the Appellant No.1 though the submission is that the same was dishonoured. There is no explanation with regard to the receipt of a substantial amount of Rs. 35,00,000/-. The husband who has signed the agreement to sell has endorsed the same as on behalf of the wife. The husband and wife are together in the transaction and have jointly filed the appeal. The learned single judge has held that these are all triable issues and rightly so.

13. On a meaningful reading of the plaint, it is clear that the plaint discloses a cause of action. The issues raised by the Appellants would be considered at an appropriate stage.

14. In our view, the learned Single Judge has rightly rejected the application under Order VII Rule 11 and has rightly held that the plaint cannot be rejected in exercise of power under Order VII Rule 11.

15. In view of the above, we find no merit in the appeal. The appeal is, accordingly, dismissed with no order as to costs.

16. We clarify that nothing stated hereinabove shall amount to an expression of opinion on the merits of the case of either party.

SANJEEV SACHDEVA, J.

FEBRUARY 09, 2015
st

BADAR DURREZ AHMED, J.