

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

% *Judgment pronounced on: 14th May, 2015*

+ **Crl.M.C. 3584/2011 & Crl.M.A. No.12728/2011**

DEALGOOD BUILDERS & DESIGNERS P. LTD. Petitioner
Through Mr.D.M.Bhalla, Adv. with
Ms.Chaitali Jain, Adv.

versus

STATE & ORS Respondents
Through Mr.Satish Verma, APP for the State.
Mr.Ujjwal Jha, Adv. for R-2.
Mr.D.S.Narula, Sr.Adv. with
Mr.D.S.Kohli & Mr.T.D.Sharma,
Adv. for R-4.

AND

+ **Crl.M.C. 1962/2012**

STATE Petitioner
Through Mr.M.N.Dudeja, APP for the State

versus

RUPESH VERMA & ORS Respondents
Through Mr.Ujjwal Jha, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. Brief facts of the case as per petition being Crl. M.C No. 3584/2011 are that Shri Amit Kishor Verma, respondent No. 2

approached the petitioner and represented that he was in need of funds required to be deposited by him in the court in compliance of the order passed by the Additional Chief Metropolitan Magistrate, New Delhi. It was suggested by respondent No.2 that one M/s Om Sai Nath Construction Pvt. Ltd. who is the owner of property admeasuring 502.32 sq. yds. known as Sai Regency bearing No. C-6/1, DLF Qutub Enclave, Phase-I, Arjun Marg, Gurgaon. The said property was seized by the IO in case FIR Nos. 179/2009, 180/2009 and 32/2010 and he had been granted permission to sell the said property by the Additional Chief Metropolitan Magistrate vide order dated 1st October, 2010. The respondent No. 2 was desirous of selling the said property in order to meet his financial need.

2. In view of such offer made by the respondent No.2, the petitioner agreed to purchase the property in question on 'as is where is basis' for a total sale consideration of Rs. 5.15 crores who made token/bayana payment of Rs. 1.00 lac in cash to the respondent No.2. The respondent No. 2 executed and signed a handwritten Memorandum of Understanding (MOU) dated 14th December, 2010 containing schedule of payment, the brief terms and conditions which are mutually agreed between the parties are mentioned.

3. The respondent No.2 needed Pay Order for Rs. 4.50 crores for depositing in the court in compliance of the court order. The petitioner arranged Pay Order/Banker's Cheque No. 014702 dated 16th December, 2010 drawn on Yes Bank Ltd., South Extension-II branch for Rs. 4.50 crores in favour of Additional Chief Metropolitan Magistrate, Patiala House Courts. Even he handed over photocopy of

the said Pay Order to respondent No. 2 who was assured to handover the original Pay Order to him after getting clearance/sanction for sale of the property at the time of execution of Sale Deed. Accordingly, the respondent No. 2 executed Agreement of Sale dated 16th December, 2010 in favour of M/s Dealgood Builders and Designers Pvt. Ltd. wherein it was stated that permission to sell the property in question was granted by the Additional Chief Metropolitan Magistrate, Patiala House Courts vide order dated 1st October, 2010 in FIR Nos. 179/2009, 180/2009 and 32/2010. The petitioner was assured by the respondent No. 2 to comply with all necessary requirements and to execute the Sale Deed in favour of the petitioner's company.

4. In view of the said arrangement the respondent No. 2 informed the Additional Chief Metropolitan Magistrate-01, New Delhi on 24th December, 2010 that he was ready to deposit Rs. 5.00 crores in the court in terms of the order dated 23rd December, 2010 passed by this Court in WP (CrI.) No. 1882/2010 and further stated that he had entered into Agreement of Sale dated 16th December, 2010 with M/s Dealgood Builders and Designers Private Ltd. for sale of the property in question for a total sale consideration of Rs. 4.50 crores. The counsel for the investors also submitted that the accused/respondent No. 2 had committed cheating not only with the Court/IO but also with M/s Dealgood Builders and Designers Private Ltd. by entering into Agreement of Sale dated 16th December, 2010 in respect of the property in question, which was lying seized with the IO. It was also observed by the Additional Chief Metropolitan Magistrate that in the

order dated 1st October, 2010, the predecessor, nowhere granted permission to sell or dispose of the seized property by the accused persons but has only directed that if the accused proposes to collect the funds by disposing of any assets whether mentioned in the application or not the accused persons may intimate the Court and assistance may be rendered by the Court.

5. The respondent No. 2 moved an application seeking direction for release of properties in terms of the order dated 1st October, 2010 passed by the Additional Chief Metropolitan Magistrate. The complainant/investors had also moved applications dated 23rd December, 2010 for disposal of the properties. Besides, the petitioner also filed an application seeking necessary orders and directions for registration of Sale Deed in favour of the petitioner in respect of the property in question. All the said applications were disposed off by the Additional Chief Metropolitan Magistrate vide order dated 19th March, 2011. The application filed by the complainant/ investors was dismissed as withdrawn. The application filed by the petitioner was dismissed on the ground that the same has no merits though the petitioner wanted to deposit the balance consideration amounting to Rs. 5.14 crores and sought directions and requested the Court not to allow respondent No.2 to sell or alienate the property in favour of any other person/entity.

6. The Additional Chief Metropolitan Magistrate disposed of the application filed by respondent No. 2 with the orders that the property in question i.e. Sai Regency, C-6/1, Arjun Marg, DLF, Phase-I, Gurgaon, which was lying seized in the court be released so that it

may be disposed of by Shri Amit Kishor Verma, respondent No. 2 to deposit the sale proceeds in the court for the ultimate benefits of the investors.

7. Thereafter, respondent No. 2 moved an application before the Additional Chief Metropolitan Magistrate that they desired to sell the property in question to the petitioner's company viz. M/s Dealgood Builders and Designers (India) Pvt. Ltd. in compliance of the aforesaid order dated 19th March, 2011 and sought directions from the Court that IO be directed to verify the genuineness of the deal relating to sale of the property in question.

8. In April, 2011 one Shri Bhupender Sharma, respondent No. 3 describing himself as the complainant in case FIR No. 179/09 moved Criminal Revision Petition titled 'Bhupender Sharma Vs. State & Ors.' before the Additional Sessions Judge, New Delhi seeking modification of the aforesaid order dated 19th March, 2011 passed by the Additional Chief Metropolitan Magistrate to the extent that a court commissioner be appointed to execute the order.

9. The petitioner moved an application under Section 403 Cr.P.C in the aforesaid Criminal Revision Petition before the court of Additional Sessions Judge submitting that the applicant being necessary party be impleaded as a necessary party and be heard before disposal of the petition. Thereafter in July, 2011, the petitioner moved another application in the aforesaid Criminal Revision Petition in the court of Additional Sessions Judge, whereby a proposal was submitted by the petitioner for purchase of the property in question

for sale consideration of Rs. 5.50 crores, as the price offered by the other prospective buyer/purchaser.

The Revision Court recorded the statement of the counsel/Advocate for respondent No. 2, wherein it was stated on his behalf that he was not ready to accept the proposal amount of the petitioner as they had already filed a complaint against him in EOW cell. The matter was remanded back before Additional Chief Metropolitan Magistrate without taking into consideration the submissions made by the APP as the petitioner had no locus standi to file the revision petition. The contention of the petitioner was that the Revisional Court had passed the order without deciding anything on merits except certain directions were issued to the concerned IO. Two applications filed by the petitioner were also dismissed by the Additional Sessions Judge vide a separate order dated 20th July, 2011.

10. The respondent No.2 before the trial court tendered a DD bearing no. 252054 dated 7th July, 2011 in the sum of Rs. 5.25 crores, which was taken on record with the observation; 'No objection raised by any of the investors' vide order dated 21st July, 2011 passed by Link MM (PO being busy in administrative work). The matter was adjourned to 22nd July, 2011 for further proceedings. The Link MM also observed that there was no impediment in granting permission for release of the title documents against the sale consideration tendered by M/s Habitat Towers Private Ltd., respondent No. 4 and issued directions for conversion of the Demand Draft of Rs. 5.25 crores already taken on record on behalf of the

proposed purchaser into an FDR for the purposes of finalization of the deal and for release of relevant documents pertaining to the property to the respondent No.2.

11. By order dated 25th July, 2011 passed by the Link MM, the application for rectification of typographical error in order dated 22nd July, 2011 moved on behalf of the accused/respondent no. 2 was allowed, whereby, it was directed that the order dated 22nd July, 2011 be read as was passed in all the three FIRs bearing nos. 179/2009, 180/2009 and 32/2010 and the property mentioned therein be read as Sai Regency, C-6/1, Arjun Marg, DLF Qutub Enclave, Phase-I, Gurgaon.

12. The petitioner herein had challenged the impugned orders passed by the Additional Sessions Judge and the Link MMs, whereby the application(s) filed by the petitioner were dismissed and the property was allowed to be sold for Rs. 5.25 crores as against the consideration amount of Rs. 5.50 crores offered by the petitioner.

13. The present petition has been filed under Section 482 Cr.P.C seeking quashing of orders dated 20th July, 2011 passed by the Additional Sessions Judge, New Delhi and orders dated 22nd July, 2011 and 25th July, 2011 passed by the Link Metropolitan Magistrates Patiala House Courts, New Delhi as unwarranted and the same cannot be passed as the relief sought is in the nature of specific relief.

14. The second petition being Crl.M.C.No. 1962/2012 has been filed by the State titled as "State vs. Rupesh Verma" on the grounds that the property in question was purchased by the respondent No. 2

out of cheated amount obtained from the investors and the court had erred in order dated 20th July, 2011 allowing the State to withdraw the revision petition and once the revision petition was disposed of, the court becomes functus ex-officio and has no jurisdiction to pass further orders in the matter. Thus, the said order is contrary to law.

15. The petitioner is admittedly not a party in the trial court proceedings. He paid just Rs.1 lac to the respondent No.2 as bayana amount. His application for impleadment was not allowed by the trial court. It appears that the intention of the trial court was to settle the dues of investors and the petitioner was given ample opportunity to meet the required standard to purchase the property and deposit the sale proceeds with the Court but he failed to do so.

16. The petitioner did not disclose the fact that he had already executed the MOU dated 14th December, 2010 of Rs. 5.15 Crore and the agreement dated 16th December, 2010 of Rs. 4.50 Crores.

17. The petitioner in order to falsely implicate respondent No.2 in a false case filed a complaint with the CBT (EOW) against respondent No.2 for cheating and defrauding under Sections 420 and 406 IPC. Within two weeks thereafter, i.e. on 19th March, 2011, the petitioner filed an application before the Additional Chief Metropolitan Magistrate seeking directions for registration of sale deed in his favour. The said application was opposed on the ground that the petitioner had no locus standi to appear in the case.

18. The Court in its order recorded that the learned APP for the State as well as the I.O. had no objection to the sale of the property. However, the Court dismissed the application on the grounds that the

application was entirely of a civil nature and partly in form of an injunction and the Court had no power to review its earlier order dated 24th December, 2010.

19. By the order dated 19th March, 2011 passed by the Additional Chief Metropolitan Magistrate, Patiala House Courts, the right of the petitioner to purchase the property was declined. The petitioner has not challenged the said order and the same has attained finality.

20. It has also come on record that in the Delhi High Court Mediation and Conciliation Centre, the petitioner was directed to produce the photocopy of the demand draft of Rs. 7.25 Crores, but despite of many opportunities for 4-5 times, the petitioner failed to comply with the directions by the mediator and he had to still prove his potency to pay the amount.

21. It is also evident from the material placed on record that on the basis of proposal given, the Additional Sessions Judge gave multiple opportunities to the petitioner to come up with a concrete proposal but the petitioner failed to do so. It shows that the petitioner had no intention in purchasing the property in question as can be seen from the orders passed by the trial court.

22. The sale proceeds have been deposited in the Court which is for the benefit of the investors and in any case, the deposit of amount of Rs. 5.25 Crores has accumulated an interest thereby totaling to an amount of about Rs. 7 Crores as on date and the same is increasing everyday. Therefore, the amount deposited with the Court and the interest accumulated over a period of time has to be passed to the investors which is the real intention of the trial court. Therefore, any

suggestion made by the petitioner for purchasing the property shall prejudice the rights of investors and will curtail the benefit of the investors.

23. Even in the order dated 22nd July, 2011 passed by the Link Metropolitan Magistrate, Patiala House Courts, New Delhi clearly mentions that the offer of the petitioner was without the currency and payment plan, so it could not have been considered any way. The effective portion of the order reads as under:-

“It seems that the investors in the matter are the real sufferer of the ongoing tug of war regarding the sale of the property. The fate of the investors who are already victims cannot be further jeopardized. Even the interest of the accused who was released on interim bail subject to the payment of the said fixed amount to the investors after sale of his property could not be avoided”.

24. From the entire gamut of the matter, it is clear that the petitioner has no locus standi to challenge the impugned orders. His offer was rejected by the trial court. In case he has any grievance against the respondent No. 2, he is entitled to take the recourse of appropriate remedy in accordance with law. In the present proceedings, he has no legal rights to challenge the impugned order in view of facts that he is not a party to dispute which is subject matter of the pending criminal proceedings.

25. The second petition filed by the State has also no force as the Criminal Revision Petition was itself withdrawn by the State. The impugned orders were passed in the interest of investors who have till date not paid amount which is lying deposited in trial court.

26. Both the petitions are accordingly dismissed. No costs.

(MANMOHAN SINGH)
JUDGE

MAY 14, 2015