IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3091 of 2002 (O&M)
Date of Decision.28.09.2016

M/s Dewan Enterprises ....Appellant

Vs.

S.S.V. Industries and another ....Respondents

Present: Mr. Arun Jain, Senior Advocate with
Mr. Sham Lal Bhalla, Advocate
for the appellant.

Mr. Sanjiv Sharma, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

-.-

AMIT RAWAL J.

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking specific performance of agreement to sell dated 23.02.1988 by both the Courts below.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Sham Lal Bhalla, Advocate appearing for the appellant submitted that the aforementioned suit was filed in respect of agreement to sell as mentioned above *viz-a-viz* plot No.184, Industrial Area, Phase1, Panchkula for a total consideration of ₹58,000/-, which was paid at that time. In fact, the vendor had received the entire sale consideration and also executed certain documents namely: (i) Will; (ii) Indemnity Bond; (iii) Affidavit and (iv) irrevocable General Power of Attorney. The vendor also applied to the Haryana Urban Development Authority for transfer of the plot in the name of the appellant. The required fee of ₹6000/- and other charges were also deposited. The Estate Officer, HUDA, without objection, referred the matter to the Chief Administrator, HUDA for onward transmission to the Director, Industries Department, Haryana. However, in the meeting held on 09.01.1989, the 2nd Line Committee rejected the case for transfer of the plot to the appellant-plaintiff. On receipt of this information, the appellant-plaintiff immediately represented his case to the Director, Industries Department for review of the entire matter and he was advised to re-route the case through the Chief Administrator, HUDA and accordingly, the appellant-plaintiff resubmitted the case to the HUDA for necessary permission. All the relevant papers were supplied to the HUDA and a sum of ₹15000/- was also deposited. HUDA did not transfer the plot and in fact, the delay was not attributed to the plaintiff as he had always remained ready and willing perform his part of the contract. In fact, the vendor had become dishonest in the month of June, 1990 by sending the letter dated 19.06.1990, Ex.P29, as the prices of the property had increased by that time and therefore, he thought of cancelling the agreement.

He submitted that both the Courts below have committed illegality and perversity in misreading the contents of the letters, Ex.P4 Ex.P6, Ex.P7, Ex.P9 and Ex.P-16 whereby the factum of deposit of the transfer fee was acknowledged by the HUDA. In this context, he has drawn attention of this Court to the following correspondences.

The letter dated 21.03.1990, Ex.P6, was written by the vendee, appellant-plaintiff, to the Estate Manager, HUDA, Panchkula to submit, that in fact the plot aforementioned was allotted to the vendor for manufacturing of mufflers exhaust silencer. Earlier the transfer of the plot was sought for the purpose of manufacturing other products but the same was denied by the

Director, Industries vide letter No.3598 dated 27.03.1989. This fact was brought to the knowledge of the vendee vide letter dated 04.04.1989, Ex.DX, and he had requested HUDA to transfer the plot as he was willing to start with the very same project, as indicated above. The aforementioned letter was duly replied by the HUDA on 30.03.1990 that in case the appellant wanted to continue with the same very project then request the allottee to apply again for transfer of the plot with an undertaking that he would continue with the very same project report. The appellant had also written letter to the Estate Officer dated 08.05.1990, Ex.P8, that the allottee/vendor had already submitted fresh application on 04/05.04.1990 and undertaking in the shape of affidavit and therefore, requested for transfer of the plot as early as possible.

He further submitted that in response to letter dated 04/05.04.1990, vide letter dated 21.05.1990, Ex.P9, HUDA wrote to the vendor-allottee to the following effect:-

> "*It is intimated that plot is in the name of firm. You are requested to submit the certified copy of the partnership deed of M/s SSV Industries.*"

He submitted that before the aforementioned letter, the allottee had written letter to the vendee dated 19.06.1990 calling upon him to transfer the plot in their names within 15 days, failing which all the documents of the sale shall stand cancelled and the sale money shall be returned but simultaneously had also written a letter to HUDA dated 06.07.1990 for transferring of the plot by submitting all the documents and the information as sought by HUDA, in essence, the letter dated 19.06.1990 was meaningless as the allottee-respondent No.1 till that time was performing his part of the agreement. However, on 19.07.1990, HUDA wrote letter to the attorney of the vendor and copy of same was also endorsed to him whereby it found that a firm of the property had been constituted with Sarv Shri Narain Singh, Krishna Kumari and Satish Kumar as partners and deletion and addition of the partners could not be done without prior permission of this office and therefore, due to the shortcomings in the documents submitted for transfer of the plot in the name of M/s Dewan Enterprises, no action could be taken unless and until the same were rectified. He submitted that the aforementioned letter is a clincher that respondent No.1 had caused breach of the terms and conditions of the agreement in not performing its role and unless and until, the vendor did not rectify the same, the transfer of the plot could not have been done. It is in this backdrop of the matter, the aforementioned suit was filed, but the Courts below abdicated in not referring contents of the letter rather gave cursory reference of the exhibits and formed an opinion that letters leave no manner of doubt that the appellant-plaintiff was/is not entitled to discretionary relief.

He submitted that the lower Appellate Court being last court of fact and law was required to examine the contents of the documents threadbare even for concurring an erroneous finding of the trial Court. The Courts below have erroneously found that it was a contingent agreement and have heavily relied upon letter dated 04.04.1989, Ex.DX, which became meaningless and extinct in view of the fact that till June, 1990 even vendee had submitted all the documents for transfer but HUDA had shown its inability to transfer the plot owing to the fact that the vendor had after submitting the name of the partners to HUDA by virtue of allotment of plot, had changed the partnership as the aforementioned change in the partnership could not be effected without taking prior permission of HUDA, much less, information. The sending of the cheque of the earnest money vide letter dated 10.07.1990 which had not been encashed was just an intentional act of the respondent-defendant No.1 for avoiding his liability as his intention had become dishonest. All these factors lead to irresistible conclusion that the appellant-plaintiff had always been ready and willing to perform his part of the contract and there is compliance of Section 16(c) of the Specific Relief Act, 1963 and therefore, discretion under Section 20 of the aforementioned Act was required to be exercised.

In support of his contention, he relied upon the ratio decidendi culled out in the judgment of this Court in ***Ramesh Mohan and another Vs. Raj Krishan and others 1984 Vol. LXXXVI 211*** wherein this Court held that it is always to be borne in mind that while administering justice, equity always plays an important part and the Courts cannot loose sight of the equities and thus, help a wrongdoer on mere technicalities.

Per contra, Mr. Sanjeev Sharma, learned counsel appearing for the respondents submitted that the contract was a contingent one which was depending upon certain conditions. Once those conditions remained unfulfilled, the agreement could not be performed. The remedy, if any, for the plaintiff was for refund of the amount at the best along with interest. In support of his contention, he relied upon ratio decidendi culled out in the judgment of Hon'ble Supreme Court in ***Nandkishore Lalbhai Mehta Vs. New Era Fabrics Pvt. Ltd. And others 2016(1) CCC 270***. To this effect, he also relied upon certain other judgments, particularly, with regard to provisions of Section 56 of the Indian Contract Act that the contract had become frustrated i.e. ***Shri Ram Builders Vs. State of M.P. 2014(4) SCC***

102 and on the point of contingency, he relied upon the judgments of this Court in ***Smt. Harbans Atma Singh Vs. Ramesh Kumar 1986(1) Vol. XIII AILLR 241.; M/s Bhatia Furniture Mart Vs. M/s Globe Engineering Works and another 1990(1) RRR (P&H) 124*** and judgment of Division Bench of Gujarat High Court in ***Najmudin I. Bharmal and others Vs. Charotar Gramoddhar Sahakari Mandali Ltd. And others 1997(2) Indian Civil Cases 661*** to which he submitted that the aforementioned judgments came to be passed in respect of industrial plot allotted by HUDA whereby Director, Industries had rejected the request of the vendee to set up a project. The concurrent finding of fact cannot be interfered unless and until, there is gross illegality and perversity. Both the Courts below have appreciated the documentary and oral evidence in correct perspective though the trial Court had dismissed the suit in toto by not granting the discretion and also held that the suit was barred by provisions of Order 2 Rule 2 CPC but the lower Appellate Court reversed the finding of embargo of Order 2 Rule 2 CPC but upheld non grant of discretion. He submitted that in view of the aforementioned points referred to above, much less, the case laws and provisions of Section 50 of the HUDA Act, the suit was not maintainable.

He also submitted that once the Director, Industries refused to grant the permission, nothing was left as contract had been frustrated and the remedy only was to refund of the earnest money. It was refunded but the appellant-plaintiff failed to encash the cheque, thus, urges this Court for confirming the findings rendered by the Courts below by dismissing the appeal.

I have heard learned counsel for the parties, appraised the paper, case laws cited and of the view that there is force and merit in the submission of Mr. Sharma. In view of the facts above, it would be apt to reproduce the contents of the letters referred to above:-

> "***Ex.P-4 dated 07.11.1988***
>
> *From* *Estate Officer, HUDA, Panchkula*
> *To* *The Chief Administrator, HUDA, Manimajra (U.T.), Chandigarh.*
>
> *Industrial plot No.184, Phase-I, Panchkula measuring 1000 sq. mtr.was transferred to M/s S.S.V. Industries vide this office letter No.1350 dated 19.01.1982. Now Krishna Kumari herself being GPA of half share of Sh. Narain Singh has requested to grant permission to transfer above plot to M/s Dewan Enterprises, 1073/19-B, Chandigarh. The transfer fee of Rs.6000/- has been deposited by the allottee. It is 2nd transfer case upto date dues have been deposited. The project report in duplicate and copy of transfer application are enclosed herewith for onward transmission to the Director of Industries, Haryana for approval.* *-sd-*
>
> *Estate Officer, HUDA, Pkl.*
>
> ***Ex.DX dated 04.04.1989***
>
> *To* *Diwan Enterprises, H.No.1073, Sector 19-B, Chd.*
>
> *Dear Sir,*
>
> *This is to inform you that your case for transfer of Industrial Plot No.184, Industrial Area, Phase I, Panchkula has been rejected and filed by Estate Officer, Haryana Development Authority, Panchkula vide his letter No.3597 dated 27.03.1989. Copy of the said letter has also been forwarded to you for information. In the light of the above, it has become impossible to transfer the plot. You may please contact me and take back your advance and return the original documents of the plot handed over to you for the purpose.*
>
> *Thanking you,* *Yours faithfully,*
> *-sd-*
> *Krishna Kumari*
>
> ***Ex.P6 dated 21.03.1990***

From Diwan Enterprises

To The Estate Manager, HUDA, Panchkula.

Reference your memo No.LM1/LA/D-123/pkl/2267-A dated 27.01.1989 & Endst. No.3598 dated 27.03.1989, we have purchased plot No.184, Phase 1. We applied for the transfer of the said plot in favour of our firm to install the unit of seasoning timber plant but that project was not approved by the industry department. Now we have decided to start the manufacturing of muffler exhaust silencers for which the plot originally allotted.

It is humbly requested that the said plot may kindly be transferred in our firm's favour so that we may be able to install and manufacturing the exhaust muffler silencers unit. Affidavit to this effect is enclosed herewith.

Transfer fee etc has already been deposited. If any document yet to be submitted or any due etc are to be paid, may kindly be intimated so that needful may be done.

Thanking you,

Yours faithfully,
-sd-

Ex.P-7 dated 30.03.1990

From Estate Officer, HUDA, Pkl.

To Sh. Dewan Enterprises

xxxx xxxx xxxx xxxx

If you want to install the allottee's project then ask the allottee to submit application again along with an undertaking that you will continue with the same project report.

-sd-
for Estate Officer, HUDA

Ex.P-8 dated 08.05.1990

From Diwan Enterprises, 1073, 19-B, Chandigarh.

To The Estate Officer, HUDA, Pkl.

Kindly refer to your letter No.4770 dated 30.03.1990.

It is submitted that a fresh application has already been submitted by the allottee on 04.04.1990. The undertaking in the shape of affidavit has also been submitted but the said plot is yet to be transferred in our favour.

The application from the allottee and photostat copy of the affidavit regarding undertaking is also again enclosed herewith. It is humbly requested that the above mentioned plot may kindly be transferred in our favour at an early date.

Yours faithfully,
for M/s Diwan Enterprises
-sd-
partner

Ex.P9 dated 21.05.1990

From *Estate Officer, HUDA, Pkl.*

To *M/s SSV Industries, 494, Sector 7, Pkl.*

"xxxx xxxxx xxxxxx

It is intimated that plot is in the name of of firm. You are requested to submit the certified copy of partnership deed of M/s S.S.V. Industries.

-sd-
for Estate Officer, HUDA, Pkl.

Ex.P29 dated 19.06.1990

To *M/s Diwan Enterprises, 1073, Sector 19-B, Chandigarh.*

This is to inform you that 'agreement to sell' was executed in respect of industrial plot No.184, Phase-I, Panchkula in the month of February, 1988. You failed to get the same transferred in your name within the reasonable time. We are receiving queries from the Estate Officer, Haryana Urban Development Authority, Panchkula in this connection. We, therefore, advise you to get the said plot transferred in your name within 15 days from the receipt of this letter failing which all the documents for the sale of the industrial plot No.184, Phase-I, Panchkula shall stand cancelled and the sale money shall be returned to you as per agreement.

Yours faithfully,

for SSV Industries
-sd-
Krishna Kumari, Managing Partner.

Ex.P13 dated 06.07.1990

From S.S.V. Industries, 494, Sector 7, Panchkula.

To The Estate Officer, HUDA, Panchkula.

Our replies to your memo No.8726 dated 11.06.1990 are being given as herein under:-

(i) Certified true copies of GPAs in favour of Smt. Krishna Kumari and Sh. Dev Dutt Gaur are enclosed.
(ii) Affidavit duly attested in respect of that the partners are alive attached.
(iii) As regards to the 50% and 40% shares in the name of Sh. Narain Singh, its submitted that initially 50% share had been agreed verbally to Sh. Narain Singh which has been changed to 40% vide agreement entered upon between the partners on 24.05.1981. Above stated change has already been accepted by all the parners please.

Kindly approve the transfer at an earliest possible date.

Ex.P30 dated 10.07.1990

To M/s Diwan Enterprises, 1073, Sector 19-B, Chandigarh.

This is with reference to our registered letter dated 19.06.1990 in connected with the plot No.184, Industrial Area, Panchkula, Phase 1st, Distt. Ambala (Haryana).

In the above mentioned letter, we had requested you to take appropriate action for transfer of the plot in your name, otherwise the deal for the sale of the plot will be deemed to have been cancelled after expiry of 15 days thereafter.

Now, more than 15 days have passed and to my knowledge you have taken no steps to comply with my request in the above mentioned letter.

Since, the agreement to sell and all other papers i.e. Power of Attorney etc. given to you have been cancelled, I am *enclosing herewith a cheque No.195902 dated 10.07.1990 for Rs.58,000/- on the Haryana State Cooperative Apex Bank Limited, Chandigarh as refund of the advance received from you and by this, deal stand cancelled. The Estate Office is being requested not to act on our behalf for any purpose, in connected with, the plot on the power of attorney etc.*

Yours faithfully,
for SSV Industries
-sd-
Krishna Kumari, Managing Partner.

Ex.P14 dated 19.07.1990

From The Estate Officer, HUDA, Panchkula.

To Sh. Dev Dutt s/o Sh. Bakshi Ram
r/o House No.16, Sector 17, Panchkula.

Reference your letter No.5.4.1990 on the subject cited above.

The transfer case was examined thoroughly and revealed that Ch. Narain Singh had executed GPA of half share in favour of Krishna Kumari d/o Ch. Narain Singh on 6.3.81. Again Ch. Narain Singh along with other partner Smt. Krishna Kumari had executed GPA in favour of Sh. Dev Dutt Gaur on 23.02.1988. Second power of attorney on behalf of Sh. Narain Singh could only be executed after cancellation of first GPA in favour of Smt. Krishna Kumari. Therefore, his share can not be transferred on the request of GPA i.e. Sh. Dev Dutt Sharma.

Besides the above, a perusal of partnership deed dated 25.5.1981 shows that Sh. Narain Singh has 40% shares in firm M/s S.S. V. Industries whereas he has executed GPA dated 6.3.1981 for his half share in favour of Smt. Krishna Kumari which is also against the actual share of Sh. Narain Singh because in GPA dated 6.3.1981 he has 50% share whereas in partnership deed he possesses only 40% share which is contradictory.

On examination of the record, it has been found that a firm of the properties has been constituted with Sarv Shri

> *Narain Singh, Krishna Kumari and Satish Kumar as partners and their shares has also been specified in partnership deed which cannot be transferred to outsiders. Thereafter Sh. Satish Kumar sought retirement from the firm by leaving his share in favour of Smt. Krishna Kumari which entitled her 60% shares in the property. These facts have never been brought into the notice of this office. Any addition and deletion of partners cannot be made without the prior permission of this office, which has not been complied with.*
>
> *In view of the above shortcomings in the documents submitted for transfer of said plot in the name of M/s Dewan Enterprises, no action can be taken for transfer unless and until the same are rectified.*
>
> *In the end, it is also informed that this office has received an intimation from M/s S.S.V. Industries withdrawing/cancelling the GPA executed in your favour."*

Cumulative reading of the aforementioned letters leaves no manner of doubt that despite respondent-defendant No.1 had written letter dated 19.06.1990, Ex.P29 to the vendee for transferring the plot within 15 days, failing which the agreement shall be deemed to have been not in existence and the amount to be refunded is neither here nor there, for, the fact remains that no doubt earlier the appellant-vendee had applied for transfer of the plot which is a matter of record and the factum of deposit of transfer fee is not in dispute but it was for different project. The Director, Industries vide letter dated 27.03.1989 did not accept the project and conveyed it to the HUDA and HUDA wrote a letter to the vendee conveying the same to him. The vendee then agreed to the very same project for which the plot had been allotted and in this regard, the vendor on 04/05.04.1990 submitted the documents for transfer of the plot with the old project. Even after writing of letter dated 19.06.1990, the allottee in response to letter of

HUDA on 21.05.1990, wrote a letter dated 06.07.1990, Ex.P13, whereby he had submitted certain documents regarding the shares of the partners as asked for by HUDA. The contents as extracted above reveals the intention of the vendor. However, the core issue which is to be examined is the contents of letter dated 19.07.1990, Ex.P14, which was forwarded to all partners including the attorney of the vendor that when the firm was constituted, it had three partners but thereafter, one of the partner had sought retirement and the shareholding of the other partner was increased and the said factum was not brought to the notice of HUDA. In fact, the HUDA was not taken into confidence and therefore, informed the vendor that unless and until the defect aforementioned was not rectified, the transfer was not possible. After that the vendor did not take any steps and this fact is confirmed vide letter dated 19.07.1990, Ex.P29 and thereafter, immediately the appellant-plaintiff had filed the suit for specific performance with consequential relief of permanent injunction realizing that the respondent-defendant No.1 is dilly dallying the matter.

All these factors have not been noticed by both the Courts below. It is strange that the trial Court being the court of fact and law and the lower Appellate Court being the last court, have not examined the contents of the letters referred to above and heavily relied upon the letter dated 04.04.1989, Ex.DX, which, according to him and as well as the facts noticed above, had become meaningless. No explanation has come forth on behalf of respondent-defendant No.1 for not overcoming the objections indicated in the letter Ex.P14. In fact, the respondent-defendant No.1 had not been ready and willing to perform his part of the contract. No delay can be attributed to the appellant-plaintiff.

There is no dispute to the ratio decidendi culled out from the judgments referred to above by Mr. Sharma with regard to contingency and as well as the doctrine of frustration but the cumulative reading of the facts and as well as the contents of the letters leads to irresistible conclusion that both the parties were alive to the situation for transfer of the plot but the fault as per contents of the letter Ex.P14 was on the shoulder of the vendor and the vendor having failed to rectify the defects, the plaintiff had no other option but to seek the specific performance. In my view, the appellant-plaintiff was always found to be ready and willing and therefore, the Courts below ought to have exercised the discretion and the judgments and decrees passed by the Courts below are liable to be dismissed.

No doubt, this Court on earlier occasions had been framing the substantial questions of law while deciding the appeal but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in ***Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213*** wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, whether provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure. The Constitutional Bench of Hon'ble Supreme Court held that the decision in ***Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262*** on applicability of Section 97(1) of CPC was not correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back and therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

Since the agreement to sell is the of the year 1988 and the entire sale consideration had been paid, much less, a considerable time since 1993 till date has been consumed in fighting litigation, the appellant-plaintiff is required to compensate the respondent-defendant No.1 in terms of money. Accordingly, I deem it appropriate that the appellant-plaintiff shall deposit ₹40 lacs as amount of compensation within a period of three months from the date of receipt of copy of this order and thereafter, the defendant-respondent No.1 is directed to submit all the requisite documents as indicated in the letter dated 19.07.1990, Ex.P14 to HUDA so that the plot can be transferred, failing which the appellant-shall be entitled to seek execution in accordance with law.

For the foregoing reasons, the judgments and decrees passed by the Courts below are set set aside and the second appeal is allowed with the aforementioned directions.

(AMIT RAWAL)
JUDGE

September 28, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes