

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

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Judgment Reserved on: 4th February, 2016

Judgment Delivered on: 12th May, 2016

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FAO(OS) 9/2016 & CM No.808/2016 (stay)

PRALEEN CHOPRA

..... Appellant

Versus

DR JOGINDER BAJAJ

.....Respondent

Advocates who appeared in this case:

For the Appellant:

Appellant-in-person

For the Respondent:

Mr Parag Tripathi, Sr Advocate with Mr Rakesh Aggarwal
and Mr Raghavendra M. Bajaj, Advocates

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. The appellant has impugned the order dated 23.12.2015, passed by a learned Single Judge, whereby the learned Single Judge has clarified that the respondent would, for the time being, be in possession of the basement, ground floor, third floor and terrace of the property bearing No. F-4 (earlier C-51), Maharani Bagh, New Delhi-110065 (hereinafter referred to as 'the suit property') and other specific areas allocated in terms of the collaboration agreement and further directed that the respondent would be in actual physical

possession after the preparation of the report of the Local Commissioner.

2. The respondent is the plaintiff and the appellant is the defendant in the subject suit. The respondent had filed the suit claiming the reliefs *inter alia* seeking a money decree in the sum of Rs 5,92,06,611/- together with *pendente lite* and future interest @ 18% per annum w.e.f. 21.08.2015 and a further sum of Rs 3,84,67,742/- towards damages. The respondent had further sought a decree of mandatory injunction thereby directing the appellant to remove his men, material and equipment from the suit property.

3. A collaboration agreement was entered into between the respondent as an owner and the appellant as a builder for redevelopment/reconstruction of the suit property. The collaboration agreement was followed by a supplementary collaboration agreement dated 09.04.2012 and further supplementary agreements dated 14.11.2012 and 14.08.2013. There are certain disputes with regard to the reasons for execution of the supplementary agreements. However, since the same are not germane to the disposal of the present appeal, we are not adverting to such disputes.

4. In terms of the agreements between the parties, what is not in dispute is that consequent to the completion of construction by the appellant, the allocation of the respondent in the said property is *inter*

alia the entire basement, the entire ground floor, entire stilt area (except for certain areas mentioned in the agreement), entire third floor, entire terrace etc. and the allocation of the appellant/builder is *inter alia* the entire first floor, entire second floor, etc. It is not in dispute that the first floor of the said property has already been sold by the appellant with the consent/knowledge of the respondent and there is no dispute qua the same.

5. The respondent filed the subject suit contending that the appellant had not completed the construction and had not paid the entire consideration agreed to under the collaboration agreement read with supplementary agreements. The appellant is disputing the amount of consideration to be paid. However, for the purposes of disposal of the appeal, we are not referring to the said dispute. On 03.09.2015, the learned Single Judge had appointed a Local Commissioner alongwith an Architect to ascertain the extent of work already executed in the suit property and further finishing work required.

6. On 05.10.2015, the learned Single Judge recorded that the issue boiled down to both the parties completing their respective part of bargain i.e. the appellant giving the portions/flats falling in the share of the respondent in a finished state as per the agreement and the respondent giving all necessary papers required by the appellant to

enable the appellant to transfer the second floor of the suit property to the purchaser of the second floor. The parties thereafter made endeavours to settle the disputes through mediation, however, the same did not fructify into a settlement.

7. By the impugned order dated 23.12.2015, the learned Single Judge clarified that the respondent would, for the time being, be in possession of the basement, ground floor, third floor and terrace of the suit property alongwith other specific areas allocated in terms of the collaboration agreement. Noting the contention of the appellant that further work had been done in the portion allocated to the respondent, the learned Single Judge appointed the same Local Commissioner and the Architect to carry out a fresh inspection of the suit property.

8. The appellant is aggrieved by the said order inasmuch as the said order does not deal with the appellant's allocation of the suit property and the respondent's execution of the requisite documents to enable the appellant to transfer his allocation.

9. By order dated 08.01.2016, we had directed the appellant to deposit the keys of the entire suit property except the first floor before this Court and also directed the Local Commissioners to furnish their reports before us also. The needful was done. An amicable resolution of the dispute was attempted even by us, however, the same was not possible.

10. The disputes between the parties have been narrowed down to a great extent. The claim of the respondent in the suit is with respect to the alleged balance consideration of approximately Rs 5.9 crores under the collaboration agreement and the supplementary agreements and the alleged damages of Rs 3.8 crores for delay in construction and for completion of the respondent's allocation in the suit property.

11. On perusal of the reports furnished by the Local Commissioners, *prima facie*, it is evident that the entire allocation falling to the share of the respondent is complete. However, there seems to be a minor work required in the servant's room on the terrace.

12. On the part of the respondent, the respondent has to execute documents in favour of the appellant enabling the appellant to deal with and also dispose of the second floor and the other allocation falling to the share of the appellant. As per the respondent, the appellant has to pay the balance sale consideration under the collaboration and supplementary agreements. It is contended that the cheques in the sum of Rs 4 crores had been issued by the appellant, however, the same had been returned unencashed.

13. To balance equities and to further resolve some of the pending disputes, we dispose of the appeal by directing as under:-

- (i) the appellant shall provide to the respondent a draft of all the documents required by the appellant for the purposes of transfer of the second floor within a period of one week from today;
- (ii) the respondent shall execute the documents and deposit the same with this Court in the Suit (CS(OS) 2670/2015) within a period of ten days of supply of the draft of the documents;
- (iii) on deposit of the documents by the respondent with this Court, the respondent shall be handed over, by the registry of this court, the keys of the basement, ground floor, third floor and terrace of the suit property forthwith;
- (iv) the appellant shall deposit a sum of Rs 7.5 crores with the Registrar General of this Court, on such deposit being made, the said amount shall be kept in an interest bearing fixed deposit initially for a period of 366 days to be renewed from time to time till further directions by the learned Single Judge. The amount shall be subject to the outcome of the suit i.e. CS(OS) 2670/2015;
- (v) on deposit of the said amount of Rs 7.5 crores, the appellant shall be handed over, by the registry of this court, the keys of the second floor and also all the documents referred to in para (ii) hereinabove;
- (vi) on deposit of the said amount of Rs 7.5 crores, the appellant shall have the right to deal with the said second floor in any manner he deems fit.
- (vii) The appellant shall complete the balance work required to be carried out in the servant's room

falling to the allocation of the respondent within ten days from today, if not already completed.

14. The appeal is disposed of in the above terms. There shall be no order as to costs.

SANJEEV SACHDEVA, J.

MAY 12, 2016
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BADAR DURREZ AHMED, J.

