

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

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Judgment Reserved on: 21st March, 2016

Judgment Delivered on: 10th May, 2016

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FAO(OS) 81/2016 & CM No.9050/2016 (stay)

M/S KRISHNA ESTATES & ORS

..... Appellants

Versus

M/S ASHVARYA ESTATES PVT LTD & ORS

... Respondents

Advocates who appeared in this case:

For the Appellants: Mr Bharat Bhushan Bhatia with Ms Dimple Chauhan,
Advocates.

For the Respondents: None.

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 28.01.2016 whereby the application of the applicant (defendant in the suit) seeking amendment of the written statement has been dismissed. At the time of the filing of the application, the defendant was to lead evidence in terms of the opportunity granted by the Supreme Court by its order dated 17.11.2015 in Civil Appeal No. 13437 of 2015.

2. The respondents/plaintiffs filed the suit for recovery contending that there is an agreement between the parties whereby the appellants/defendant agreed to procure for the respondents 99 acres of land and since they have failed to procure the land to the said extent, they are liable to pay damages to the respondents.

3. The appellants filed the written statement contending as under:-

“6-7. That in reply to the contents of paras under reply it is submitted that the Defendants received Rs.25,00,000/- from Plaintiff No.1 in the year 1997 and transferred 4.36 acres of land in its favour. The Defendants received Rs.96,00,000/- from the Plaintiff No.2 and transferred 22.22 acres of land in its favour. The Defendants received Rs.30,00,000/- from the Plaintiff No.3 and transferred 15.31 acres of land in its favour. The Defendants received Rs.96,00,000/- from the Plaintiff No.4 and transferred 13.04 acres of land in its favour. The Defendants received Rs.75,00,000/- from the Plaintiff No.5 and transferred 21.84 acres of land in its favour. Further, it is submitted that the Plaintiffs by way of the present suit claiming liquidated damages on the basis of the agreement dated 04.12.1997 though the Defendants deny the same as it was never intended to be acted upon. Assuming the same was there though the Defendants specifically deny the same even then the Plaintiffs are now stopped from claiming the damages thereunder as they themselves kept on making payment and getting the documents executed in their favour from the land owners even after expiry of 20 days as alleged in the plaint. Thus, the Plaintiff themselves violated the said term and now cannot take benefit or advantage of the same at this belated stage. The Plaintiffs could have not made

payments and got the documents executed in its favour after expiry of 20 days as alleged by them thus they are now barred from claiming liquidated damages under the clause of agreement dated 04.12.1997 though the Defendants vehemently deny the said clause as it was never intended.”

4. The contention of the appellants in the written statement, as originally filed, is that the appellants had transferred the land to the extent of 76.77 acres.

5. The suit was filed in the year 2000 and the appellants on 06.11.2003 filed the written statement. Issues in the suit were framed on 06.10.2005. The respondents/plaintiffs concluded their evidence on 14.01.2009. Several opportunities were granted to the appellants to lead their evidence. However no evidence was led. The right to lead evidence by the appellants was closed by the Joint Registrar on 28.11.2011. On 25.01.2012, the chamber appeal impugning the order dated 28.11.2011 of the Joint Registrar closing the appellants’ right to lead evidence was also dismissed by the learned Single Judge. The appeal impugning orders dated 28.11.2011 and 25.01.2012 was dismissed by the Division Bench on 27.02.2012. The appellants thereafter filed a special leave petition before the Supreme Court of India.

6. The Supreme Court in its order dated 17.11.2015 noted the submissions of senior counsel appearing for the appellants that the

appellants would remain content with examining Sh Anil Sharma, one of the appellants apart from six other witnesses whose affidavits were filed before the Supreme Court. An assurance was also given on behalf of the appellants that they would take steps to produce the said witnesses for cross-examination on their own responsibility. The Supreme Court by its order dated 17.11.2015, while noticing the rather negligent attitude of the appellants, in view of the nature of controversy granted a final opportunity to the appellants to produce Mr. Anil Sharma as a witness as also to examine five of the witnesses whose affidavits had been filed before the Supreme Court by way of the examination-in-chief. The Supreme Court further directed that it would be the responsibility of the appellants to produce the witnesses for cross-examination on the dates fixed by the Joint Registrar for this purpose and in case the appellants failed to produce the witnesses or any one of them, liberty was granted to the Joint Registrar to close the evidence of the witnesses not produced before him. Hope and trust was expressed by the Supreme Court that this Court would make an endeavour to conclude the trial at an early date and as far as possible within a period of three months thereof.

7. Examination-in-chief and cross-examination of Mr. Anil Sharma DW1 was concluded on 14.01.2016. On the said date, the subject application under Order VI Rule 17 seeking amendment of the written statement was filed. The subject application has been

dismissed by the impugned order dated 28.01.2016.

8. By the subject application, the appellants seek to amend the written statement and to incorporate the following :

“6-7..... It is further submitted that the Defendant received Rs.50 Lacs by way of Pay-Order No.143021 dated 04.12.1997 drawn on Canara Bank, New Delhi issued by M/s Ashvarya Estates Pvt. Ltd., as one of the purchasers in favour of Shri Anil Sharma as attorney and transferor of 32 acres of land of the owners in possession and a sum of Rs.50 Lacs were also received vide draft No. 980745 dated 04.12.1997 drawn on Syndicate Bank, Barakhmaba Road Branch, New Delhi by M/s Milet Estates Pvt. Ltd. being one of the purchasers in continuation of part and parcel agreement of the entire transaction of 99 acres of land.”

9. The appellant by the proposed amendment seeks to contend that not only the land, which was originally claimed in the written statement by the appellant to have been transferred in favour of the respondents, the appellant had further transferred an additional 32 acres of land in the year 1997.

10. It is candidly admitted by the appellants that they were signatories to the alleged transaction. This admission of the appellants shows that they were aware as far back as in 1997 about this transaction. The written statement was filed in the year 2003. Neither such plea was taken in the written statement nor had any

contemporaneous document been placed on record. Evidence on behalf of the respondents/plaintiffs was concluded long ago. It is not even contended during cross-examination of the respondents/plaintiffs that any suggestion was put that the additional land of 32 acres was also got transferred in favour of the respondents/plaintiffs in the year 2007. It is not even contended that the witnesses of the respondents/plaintiffs were confronted with any document to establish such a transaction.

11. Furthermore, the Supreme Court had granted a limited right to the appellants to lead evidence of Mr. Anil Sharma and the other witnesses whose examination-in-chief by way of affidavits had been filed before the Supreme Court. The alleged transfer is stated to have been done in the year 1997 much prior to the order of the Supreme Court. No liberty was claimed from the Supreme Court to seek amendment of the written statement. To permit the appellants at this stage to amend the written statement and incorporate such a plea, would be setting the clock back several years and would cause grave prejudice to the plaintiffs who have been litigating for over 16 years.

12. The plea taken by the appellants that they were not aware of the said transaction and only became aware on inspection of the record has not been found to be believable by the learned Single Judge and in our view rightly so.

13. We find no infirmity with the impugned order. The appeal is, accordingly, dismissed leaving the parties to bear their own costs.

SANJEEV SACHDEVA, J.

MAY 10 , 2016
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BADAR DURREZ AHMED, J.

