

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

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Date of decision: 18th April, 2016

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RFA No.280/2014 & CM No.11260/2014 (for stay)

SHRI IKRAMUDDIN

..... Appellant

Through: Mr. Virender Singh, Adv.

Versus

SHRI HAKIMUDDIN

..... Respondent

Through: Mr. D.P. Singh, Adv.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The appeal impugns the judgment and decree dated 17th April, 2014 of the Court of Additional District Judge (ADJ)-I, Shahdara District, Karkardooma Courts, Delhi of dismissal of CS No.92/2013 bearing Unique ID No.02402C0303492012 filed by the appellant on 19th October, 2012 for specific performance of Agreement dated 18th August, 2000 of sale of immovable property and for permanent injunction restraining the respondent / defendant from selling, alienating or creating third party interest in the said immovable property consequent to rejection on an application of the respondent / defendant under Order VII Rule 11 of the Civil Procedure Code, 1908 (CPC) of the plaint.
2. Notice of the appeal was issued and the matter adjourned from time to

time; though the Trial Court record has been requisitioned but the appeal has not been admitted for hearing as yet. Vide ad-interim order dated 30th January, 2015, the parties were directed to maintain *status quo* qua title and possession of the property. Today, the counsel for the respondent seeks adjournment. However, being *prima facie* of the view that there is no error in the order of the learned ADJ of rejecting the plaint on the ground of the relief claimed therein as per averments in the plaint being barred by time, the counsel for the appellant / plaintiff has been heard and the Trial Court record perused.

3. The appellant / plaintiff instituted the suit from which this appeal arises claiming i) that the respondent / defendant on 18th August, 2000 entered into an agreement titled *Ikrarnama* with the appellant / plaintiff for sale of shop measuring 11x23 feet out of property measuring 18x23feet, Khasra No.87-88 forming part of property No.B-II-A, Gali No.3, Jyoti Colony, Loni Road, Shahdara, Delhi-110 032 for a sum of Rs.7,50,000/-; ii) that according to the agreement, the appellant / plaintiff paid Rs.1,00,000/- as earnest money and the balance sale consideration of Rs.6,50,000/- was to be paid in two instalments by 15th March, 2001; iii) accordingly, the appellant / plaintiff made a payment of Rs.50,000/- on 11th October, 2000

and the further payment of Rs.5,90,000/- on 3rd March, 2001 and the respondent / defendant issued a receipt of Rs.7,40,000/-, leaving a balance of Rs.10,000/- to be paid at the time of execution of title documents by the respondent / defendant in favour of the appellant / plaintiff before the Registrar; iv) that the appellant / plaintiff even prior to entering into the agreement was in possession of the shop agreed to be sold, as a tenant, since the year 1987; v) that it was a term of the agreement that the respondent / defendant will increase the height of the shop in question by three feet and will put a lintel on the same and for this purpose only Rs.1,00,000/- was paid as earnest money; vi) that the respondent / defendant despite receipt of Rs.7,40,000/- out of total sale consideration of Rs.7,50,000/- and despite repeated requests neither executed the title documents nor increased the height of the shop and “the respondent / defendant has lingered on the same by one pretext or the other”; vii) that “now the appellant / plaintiff came to know from the neighbours that respondent / defendant with his *mala fide* intention to get more money, wants to dispose of the shop in favour of some third person”; viii) that on receipt of aforesaid information on 16th October, 2012, the appellant / plaintiff again went to the respondent / defendant and requested him to fulfil his part of the agreement but the respondent /

defendant refused; ix) that the appellant / plaintiff has been ready and willing to perform his part of the agreement; x) that the cause of action for filing the suit arose in favour of the appellant / plaintiff and against the respondent / defendant firstly on 18th August, 2000, from “time to time as and when the appellant / plaintiff made request to the respondent / defendant for executing title documents in his favour in respect of the shop in question against Rs.10,000/- remaining consideration before the Sub-Registrar concerned” and on 16th October, 2012 when the appellant / plaintiff called upon the respondent / defendant to execute the documents.

4. The respondent / defendant contested the suit by filing written statement and also filed an application under Order VII Rule 11 of the CPC for rejection of the plaint on the ground of the relief claimed therein being barred by time. Reply to the said application was filed by the appellant / plaintiff. The learned ADJ on 27th March, 2014 framed the following issues:

- “1. Whether the suit is time barred under the Limitation Act?
2. If the answer to the issue is in the positive, whether the plaintiff is entitled for the prayers? OPP
3. What relief.”

and treated the Issue No.1 aforesaid as a preliminary issue and after hearing the counsels thereon, by a detailed order running into as many as 20 pages has answered the Issue No.1 in the affirmative and accordingly

dismissed the claim for specific performance. The respondent / defendant has however been directed to refund a sum of Rs.1,50,000/- admittedly received from the appellant / plaintiff, with interest at 12% per annum, to the appellant / plaintiff.

5. The counsel for the appellant / plaintiff on enquiry informs that the respondent / defendant has not filed any appeal against the direction for refund.

6. The counsel for the appellant / plaintiff has contended i) that the issue of limitation is a mixed question of law and fact and could not have been decided without trial; and ii) that the time fixed in the agreement of 15th March, 2001 was only for the appellant / plaintiff as purchaser to make the payment and not for execution of the title documents by the respondent / defendant in favour of the appellant / plaintiff and since as per the averments in the plaint, the respondent / defendant refused to execute the documents for the first time only on 16th October, 2012, the relief of specific performance could not be barred by time.

7. I may record that the agreement titled *Ikrarnama* is in Hindi language and neither on the Trial Court record nor before this Court any English translation thereof has been filed.

8. Article 54 of the Schedule to the Limitation Act, 1963 prescribes the period of limitation for a suit for specific performance of a contract, of three years, commencing from the date fixed for performance or if no such date is fixed, when the plaintiff has notice that performance is refused. Thus, when a date is fixed for performance, the second limb i.e. when the plaintiff has notice that the performance is refused, does not apply. I have dealt with the said aspect in detail in *L.M. Nagpal Vs. M/s Fateji & Co.* MANU/DE/2461/2013.

9. Though it is the contention of the counsel for the appellant / plaintiff that the agreement between the appellant / plaintiff fixes only a date for payment and not the date for execution of the documents but the agreement has to be read in a common sense way, to determine the intent of the parties while entering there into and read in such way, the only interpretation of the agreement is of the parties having on 18th August, 2000 fixed time of 15th March, 2001 for completion of the sale. It is also not the case of the appellant / plaintiff that the time for completion of the sale by execution of the documents was any different from 15th March, 2001. The appellant / plaintiff in the plaint has categorically stated “that despite the payment of Rs.7,40,000/- out of Rs.7,50,000/- and hence a nominal payment of

Rs.10,000/- remain unpaid which was agreed to be paid at the time of executing title documents before the Sub-Registrar concerned in favour of the appellant / plaintiff but the respondent / defendant till date has neither executed the title documents in favour of the appellant / plaintiff nor has increased the height of the shop by three feet despite the repeated requests and payment made by the appellant / plaintiff to this effect and the appellant / defendant has lingered on the same on one pretext or the other”. If the respondent/defendant, as per the agreement, was not required to complete his obligations thereunder simultaneously with the time agreed for the appellant/plaintiff to pay the entire sale consideration, the question of the appellant/plaintiff repeatedly calling upon respondent/defendant to perform his obligation or of the respondent/defendant not performing his obligations under the agreement despite receiving entire payment or of ‘lingering’ would not have arisen. Also, then the agreement would have clearly spelt out that the respondent/defendant at the time of receiving entire sale consideration, not be required to convey title in property in favour of the appellant/plaintiff as is the norm and practise in such transactions. There is no plea that for any reason, say for permissions if any required for conveying title, it could not have been conveyed at the time of payment of

balance sale consideration.

10. Even otherwise it has been held in ***K.S. Vidyanandam Vs. Vairavan*** (1997) 3 SCC 1 that even where no time is prescribed, the respondent / defendant cannot seek specific performance at his sweet will and has to seek the same within a reasonable time. The time, in the present case, from 3rd November, 2001 when the appellant/plaintiff claims to have paid entire balance sale consideration save Rs.10,000/- to 19th October, 2012 when the suit was instituted can certainly not be called reasonable. Even if the respondent / defendant had not performed his part of the agreement of increasing the height of the shop, the appellant / plaintiff ought to have enforced his remedy thereagainst within three years from 3rd March, 2001 or 15th March, 2001 and which would have been till 14th March, 2004; this suit has been filed after nearly eight years therefrom.

11. Though undoubtedly in certain situations, the aspect of limitation may be a mixed question of law and fact but not always. Reference in this regard may be made to ***Minu Chibber Vs. S.S. Chibber*** MANU/DE/2437/2014 (DB) and SLP (C) No.2068/2015 whereagainst was dismissed on 30th January, 2015.

12. Though the counsel for the appellant / plaintiff has not argued on the

aspect of the appellant / plaintiff being entitled to trial vis-a-vis the aspect of recovery of the entire amount claimed to be paid instead of only Rs.1,50,000/- but being of the view that the claim with respect thereto also would be barred by time, need to go into the said aspect is not felt.

13. The appeal is dismissed. The respondent / defendant having not contested, no costs.

Decree sheet be drawn.

RAJIV SAHAI ENDLAW, J

APRIL 18, 2016

‘gsr’..