IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.07.2017

CORAM

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
AND
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.No.267 of 2014
and M.P.No.1 of 2014

M/s.Hyundai Motor India Limited
represented by its General Manager,
No.39, T.T.K. Road,
Alwarpet, Chennai-600 018. .. Appellant

Vs.

N.Kannan .. Respondent

Prayer : Appeal filed under Order XXXVI, Rule 1 of Original Side Rules read with Clause 15 of Letters Patent, against the Judgement and Order dated 26.06.2014 made in C.S.No.744 of 2005.

For Appellant : Mr.M.S.Krishnan, Senior Counsel for M/s.Surana and Surana

For Respondent : Mr.V.Ramesh for M/s.R.Aswanth

JUDGEMENT

(Judgement of the Court was delivered by RAJIV SHAKDHER,J.)

1. This is an appeal preferred against the Judgement and Decree dated 26.06.2014, passed in C.S.No.744 of 2005.

2. The brief background, in which, the appeal arises is as follows:

2.1. The subject property, which is a plot situate at Guindy Industrial Estate has been bought by the appellant via a registered sale deed dated 10.02.1998. The rights in the subject property have been conveyed to the appellant herein by the respondent.

2.2. It is pertinent to note that the predecessor-in-interest of the respondent was, one, Mr.N.Subramaniyan, who had obtained right in the subject property from the Tamil Nadu Small Industries Development Corporation (TANSIDCO).

2.3. The record shows that the respondent, after obtaining right, title and interest in the subject property, set up and ran an industry upon the same, in the name and style of Mani Steel Rolling Mill. Since, the appellant evinced interest in the subject property, as indicated above, the sale deed dated 10.02.1998, was executed. The total consideration, which the appellant was required to pay to the respondent was a sum of Rs.365 lakhs.

2.4. The record shows that save and except to the extent of a sum of Rs.45,52,712/-, the remaining sale consideration was paid by the appellant to the respondent.

2.5. The respondent, as per the terms and conditions of the aforementioned sale deed, had agreed to receive the balance sum of Rs.45,52,712/-, after a period of three (3) months from the date of execution of sale deed, provided there was no claim whatsoever qua the subject property or any part thereof.

2.6. The record shows that, since, the balance sale consideration was not paid by the appellant to the respondent, the respondent, after the stipulated period of three months, was constrained to serve a legal notice dated 16.09.1998 (Ex.P.2) on the appellant. The appellant, dutifully, replied to the same, vide reply dated 25.09.1998 (Ex.P.3).

2.7. Much correspondences on this aspect of the matter was exchanged between the parties. Suffice it to say, the issue, based on which, the appellant claimed to have retained the balance consideration in the sum of Rs.45,52,712/- was, essentially, pivoted on proceedings, which had been taken out qua the excess vacant land, which was part of the subject property, under the Urban Land Ceiling Regulation Act, 1978 (in short, "ULCRA").

2.8. It would be important to note, at this stage, that as a matter of fact, the proceedings under ULCRA were taken out in and about 15.02.1994. The portion of the land, which was beyond the ceiling limit, ad-measured 1047 sq. mts. The competent authority had, as a matter of fact, issued an order on the said date, i.e., 15.02.1994.

3. The record shows that the respondent contested the proceedings right qua this aspect and finally obtained a judgement dated 10.06.2002, in W.A.No.1133 of 2002. The Division Bench of this Court, via the said judgement, inter alia, observed that, since, ULCRA had been repealed, the learned Single Judge's order directing the Appellate Authority to dispose of the proceedings was uncalled for.

3.1. It may be important to note that, since, the appellate Authority had not passed a final order, the first respondent approached this Court by way of a writ petition under Article 266 of the Constitution. The learned Single Judge issued a direction to the respondent therein to dispose of the matter.

3.2. It is against the said order that the authorities had preferred the aforementioned appeal, wherein, the judgement dated 10.06.2002, came to be passed.

3.3. It appears that the respondent, being frustrated on account of the fact that despite the proceedings under ULCRA having come to an end, the appellant had not paid the balance consideration, approached this Court, by way of the instant suit.

3.4. The suit, which is registered as : C.S.No.744 of 2005, was presented on the original side of this Court, on 29.11.2004. As indicated at the outset, the suit was decreed in favour of the respondent, whereby, the learned Single Judge has directed the appellant to pay the retained amount in the sum of Rs.45,52,712/-, along with interest at the rate of 18% from 10.06.2002, till the date of institution of the suit, and thereafter, at the rate of 12% on the retained amount from the date of the suit, till the date of realization.

4. Mr.M.S.Krishnan, learned Senior Counsel, who appears for the appellant, assails the order on two principal grounds. First, that the appellant retained the sum of Rs.45,52,712/-, as a part of the subject property did not have clear title. The learned Senior Counsel says, since, the proceedings under ULCRA were on, the appellant was justified in retaining the balance sale consideration.

4.1. Furthermore, learned Senior Counsel states that the property, as a matter of fact, had not been, still, mutated in favour of the appellant, as the TANSIDCO is demanding proof of the fact that an industry was running on the subject property for the period spanning between 1977 and 1981. Learned Senior Counsel says that TANSIDCO has, in this connection, demanded production of electricity cards. Thus, the submission of the learned counsel is that, this fact has not placed before the appellant herein. The subject property, as indicated above, as yet, has not been mutated in favour of the appellant.

4.2. Furthermore, according to the learned Senior Counsel, the rate of interest awarded by the learned Single Judge, is exorbitant, given the fact that the rate of interest on deposits, in the recent times, has been falling.

5. On the other hand, Mr.Ramesh, who appears on behalf of the respondent, has argued in line with the reasoning furnished by the learned Single Judge in the impugned judgement. It is the learned counsel's contention that the money was, wrongly, retained by the appellant. For this purpose, learned counsel has drawn our attention to the fact that proceedings under ULCRA had commenced on 15.02.1994, which was the date, prior to the date, when the sale deed was executed. Learned counsel submits that the facts qua ULCRA proceedings were known to the appellant, qua which, there is no specific denial by the appellant in the written statement.

5.1. In so far as the proof, which TANSIDCO demanded as regards industry being run on the subject property between 1977 and 1981, learned counsel says that the same would not be available with the respondent, as the sale deed qua, the subject property was executed by TANSIDCO in favour of the respondent only on 07.09.1989. In other words, it was the submission of Mr.Ramesh, that the objection could have been duly dealt with by the appellant by putting the onus on TANSIDCO, that the necessary proof would be available with them vis-a-vis 1977-1981.

6. We have heard the learned counsel for the parties and perused the record.

7. According to us, the learned Single Judge has reached the right conclusion with regard to the principal issue qua the retention of money. It is not disputed by the appellant that the ULCRA proceeding commenced on 15.02.1994. A specific averment with regard to the same is made by the plaintiff in paragraph 4 of the plaint. In the written statement, the appellant does not deny this aspect of the matter. Our attention is not drawn to any part of the evidence placed before the learned Single Judge, which would have us to conclude otherwise. Therefore, for the appellant to retain the sum of Rs.45,52,712/- on the ground that ULCRA proceeding had commenced, was, according to us, contrary to the terms of the sale deed executed between the parties.

7.1. In any event, this aspect of the matter had been carried in appeal by Government of Tamil Nadu, when, the Division Bench of this Court in its judgement dated 10.06.2002, passed in W.A.No.1133 of 2002, noticed that UCLRA had been repealed, and therefore, the proceedings under the said Act stood abated. Despite such a situation obtaining and the appellant being put to notice, with regard to the same, the retained sum was not paid to the respondent.

7.2. The other justification given by the appellant for retaining the sum, which is that, there was no proof of industrial activity having taken place between 1977-1981 is, according to us, red herring. As noted by the learned Single Judge, the respondent had stepped into the shoes of, one, Mr.N.Subramaniyan. There is material on record to show that TANSIDCO transferred the subject property in favour of the respondent, only in 1988-1989. The appellant, therefore, in our view, could have been unaware of this aspect. The appellant could have, in our opinion, obtained information from TANSIDCO itself, as to whether or not an industry was running on the subject property between 1977-1981. Therefore, in our view, the fault, if any, qua the delay caused in having the subject property mutated in the name of the appellant cannot be laid at the door of the respondent.

8. This brings us to the other aspect of the matter relating to the rate of interest awarded by the learned Single Judge.

Learned counsel for the appellant says that no reasoning whatsoever, as to why interest should be awarded at the rate, is indicated in the judgement. As correctly argued by Mr.Krishnan, rates of interest have been falling. We put to Mr.Ramesh as to whether the respondent would agree to this Court scaling down the rate of interest to 12% for the periods indicated in the impugned judgement.

8.1. Mr.Ramesh says that the respondent will be agreeable to such a direction.

9. Therefore, the captioned appeal is allowed only to the extent of the modification in the rate of interest. The impugned judgment is sustained with respect to the other aspects. The rate of interest is modified to 12%. The interest on Rs.45,52,712/- will be paid at the rate of 12% commencing from 10.06.2002, till the date of realization. The appellant will pay the aforementioned amount within two weeks from the date of receipt of a copy of this order.

10. Resultantly, pending application shall stand closed. The parties are directed to bear their own costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

The Sub Assistant Registrar,
Original Side, High Court,
Madras.
+2 Ccs to Ms.Surana and Surana, Advocate sr 50915.

O.S.A.No.267 of 2014
and M.P.No.1 of 2014

GP(CO)
SP(09/10/2017)