

In the High Court of Punjab and Haryana at Chandigarh

CR No. 7457 of 2017

Date of Decision:6.11.2017

AAA Landmark Private Limited

---Petitioner

vs.

Rakesh Sarin and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. J.S.Bhatia, Advocate
for the petitioner

Rekha Mittal, J.

The present petition has been directed against orders dated 5.8.2017 (Annexure P-1) and dated 10.10.2017 (Annexure P-2) passed by the Civil Judge (Junior Division), Gurgaon whereby applications filed by the petitioner under Order 7 Rule 11 and Order 47 Rule 1 read with Section 151 of the Code of Civil Procedure (in short “the Code”) have been dismissed.

Counsel for the petitioner has submitted that respondent Nos. 1 and 2/plaintiffs have filed a suit for declaration to the effect that agreement to sell dated 25.10.2012 entered inter se the defendants along with side letter dated 25.10.2012 is null and void, oppressive and/or infringement of rights of the plaintiffs. The petitioner has been impleaded as defendant No. 2 in whose favour defendant No. 1 has executed the agreement in question dated 25.10.2012. The petitioner filed application for rejection of plaint by

invoking Order 7 Rule 11 of the Code primarily on the grounds that no cause of action survives against the petitioner and simpliciter suit for declaration without seeking relief of specific performance or/and possession is not maintainable. After reply to the application was filed by the respondents/plaintiffs and having heard counsel for the parties, trial court by passing a cryptic and sketchy order negated plea of the petitioner for rejection of plaint. Application for review of order dated 5.8.2017 did not find favour with the trial court and was eventually declined on 10.10.2017.

Counsel for the petitioner has submitted that agreement dated 25.10.2012 was executed inter se the defendants and the respondents -plaintiffs are not privy thereto, therefore, they have no right/cause of action to challenge the said agreement and side letter dated 25.10.2012. In support of his contention, he has referred to judgments of Hon'ble the Supreme Court of India **M/s Virgo Industries (Eng.) Private Limited vs. M/s Venturetech Solutions Private Limited 2012(4) RCR (Civil) 372, Union of India vs. Ibrahim Uddin and another 2013(1) RentLR 354, T.Arivandandam vs. T.V. Satyapal 1977 AIR (SC) 2421, State Bank of India vs. Gracure Pharmaceuticals Limited 2014(1) RCR (Civil) 889 and Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee 2012(3) RCR (Civil)811.** Reference has also been made to judgment of this Court **Surinder Mohan vs. Pritam Kaur and another 2009(2) PLR 638.**

The second ground of challenge is that as the

respondents/plaintiffs neither sought relief of specific performance of alleged agreement entered between them (plaintiffs) and defendant No. 1 M/s Akme Raaga Limited or qua possession of the flats allegedly allotted to them by defendant No. 1, the suit is barred by law being hit by the proviso appended to Section 34 of the Specific Relief Act, 1963 (in short “the Act”), therefore, the plaint is liable to be rejected under Order 7 Rule 11(d) of the Code. For this purpose, counsel has relied upon judgment of Hon'ble the Supreme Court of India **N.V.Shrinivasa Murthy and others vs. Mariyamma (dead) by Proposed Lrs and others 2005(3) RCR (Civil) 414**. Reference has also been made to Division Bench judgments of Delhi High Court **Oval Investment Private Limited and others vs. M/s Indiabulls Financial Services Limited and others 2010(6) RCR (Civil) 214** and **Smt. Razia Begum vs. Delhi Development Authority and others 2014(59) RCR (Civil) 430** and that of Single Bench of the Delhi High Court **M/s Oval Investment Private Limited and others vs. M/s Indiabulls Financial Services Limited and others 2009 (33) RCR (Civil) 306**.

I have heard counsel for the petitioner, perused the paper book running into more than 300 pages and the judgments cited at Bar.

Before advertng to the submissions made by counsel for the petitioner, it is appropriate to recapitulate that cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. A cause of action must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is mandatory that in order to get relief, the

plaintiff has to aver all material facts.

Reverting to the case at hand, the respondents/plaintiffs have claimed their right in the subject matter of suit on the ground that they are the buyers/allottees of one apartment each in the project of defendant No. 1 namely Akme Raaga Limited at village Lakhnaula Tehsil Manesar District Gurgaon. It is averred that plaintiff No. 1 had been allotted flat No. A-1202 on 29.8.2012 who allegedly paid an amount of Rs. 69,14,956 out of total amount of Rs. 79,83,852/- whereas plaintiff No. 2 has paid an amount of Rs. 69,47,714 out of Rs. 1,03,47,092/- qua allotment of flat No.D-702. It has further been averred that defendants with a ulterior motive to defeat interests of the plaintiffs entered into a sham and bogus agreement in collusion and connivance with each other and thereafter created a facade of bona fide disputes and deliberately got themselves entangled in sham legal proceedings in order to wriggle out of their legal obligation of handing over possession of the flats to the plaintiffs and other buyers to whom allotments have been made prior to 25.10.2012.

Taking into consideration the averments raised in the plaint, I find myself unable to accept contention of the petitioner that the respondents/plaintiffs have no cause of action to file the suit merely because they are not party to the agreement of sale dated 25.10.2012, entered inter se the defendants and sought to be challenged by the respondents/plaintiffs. The judgments relied upon by counsel for the petitioner have no bearing on the facts of the case in hand nor any such ratio has been laid therein which can be applied to the controversy in question, in favour of the petitioner. With due regards, all the judgments referred to pertain to different

controversy in view of peculiar facts and circumstances of a given case, therefore, the petitioner cannot derive any advantage to its contentions from the referred authorities. However, there cannot be any dispute about the settled position in law that power under Order 7 Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after issuance of summons to the defendants or at any time before conclusion of trial. Equally true is that averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. At that stage, plea(s) taken by the defendant in the written statement is wholly irrelevant and the matter is to be decided on the basis of plaint.

This brings the Court to the second ground pressed into service by the petitioner for rejection of plaint. Much stress has been laid by counsel for the petitioner that the plaint is liable to be rejected as the suit is barred by law in the light of provisions of Section 34 of the Act. A relevant extract from Section 34, germane to the controversy, reads as follows:-

“ Discretion of court as to declaration of status or right.—

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

A plain reading of the aforesaid extract does not give an inkling that suit filed by a plaintiff seeking declaration of status or right is said to be barred by law if the plaintiff has failed to seek further relief than a mere declaration of title which he is able to seek in the suit. What has been provided by the proviso is that the court shall not make any such declaration of status or right if the plaintiff being able to seek further relief than a mere declaration of title omits to do so. This apart if a plaintiff has failed to seek further relief which he is able to seek in a suit for declaration, he can amend the plaint by invoking Order 6 Rule 17 of the Code in case any such objection with regard to the suit being not maintainable for want of seeking further relief is raised by the opposite party or during the course of proceedings, the plaintiff needs to seek further relief, available to him.

In the case at hand, the petitioner is filing repeated applications and the suit is not progressing. The petitioner earlier filed an application for rejection of plaint by invoking Order 7 Rule 10 of the Code that came to be dismissed by the trial court vide order dated 14.9.2017, challenged by the petitioner in Civil Revision No. 7050 of 2017 decided on 11.10.2017. It appears that the petitioner in place of permitting the trial to progress is trying its best to stall the proceedings one way or the other.

To be fair to the petitioner, counsel has relied upon judgments in support of his contention that the plaint is liable to be rejected for want of seeking further relief. In **Smt. Razia Begum's case (supra)**, issue before the Division Bench of the Delhi High Court was if the plaint was liable to be rejected under Order 7 Rule 11(d) of the Code because of the suit for declaration, possession and injunction being barred by limitation. The

Court, on a detailed consideration on the question of limitation, has answered the issue in affirmative. In para 93 of the judgment, there is a remark that the plaint is liable to be rejected and is not maintainable even in view of Section 34 of the Act and the aforenoticed legal position. Reading of the entire judgment leaves no manner of doubt that Hon'ble the Division Bench of Delhi High Court has not at all dealt with the issue of failure of the plaintiff to seek further relief available to the plaintiff. Rather the court dealt with the issue of failure of the plaintiff to seek cancellation of the conveyance deed in favour of defendant No. 4 as the plaintiff could be entitled to decree of possession only after she has established her title to the flat. It was held that the property stood conveyed through registered instrument in favour of defendant No. 4, certainly the plaintiff could not be entitled to relief of possession unless the appellant was granted cancellation thereof. Counsel for the petitioner has failed to advance any convincing arguments as to how the judgments passed by the Single Bench and Division Bench of the Delhi High Court in **Oval Investments Private Limited and others' case (supra)** can be applied to the controversy involved in the present case.

In **N.V.Shrinivasa Murthy and others' case (supra)**, decided by Hon'ble the Supreme Court of India, controversy before Hon'ble the Court was with regard to the suit being barred by limitation and liability to pay ad valorem court fee. In para 16, the Court has held, reads thus:-

“The High Court does not seem to be right in rejecting the plaint on the ground that it does not disclose any 'cause of action'. In our view, the trial court was right in coming to the

conclusion that accepting all averments in the plaint, the suit seems to be barred by limitation. On critical examination of the plaint as discussed by us above, the suit seems to be clearly barred on the facts stated in the plaint itself. The suit as framed is prima facie barred by the law of limitation, provisions of Specific Relief Act as also under Order 2 Rule 2 of the Civil Procedure Code.”

In the judgment, there is no reference to Section 34 of the Act or proviso appended thereto. A casual reading of para 11 of the judgment would make it evident that controversy before the Court was whether declaration to the effect that the plaintiffs are absolute owners of the suit lands can be claimed without seeking declaration that the registered sale deed dated 5.5.1953 was a loan transaction and not a real sale. As the cause of action for seeking such a declaration and obtaining re-conveyance deed according to the plaintiff's own averments in paragraph 9 of the plaint arose on 25.3.1987, it was held that reckoning the cause of action from 25.3.1987, suit filed on 26.8.1996 was hopelessly barred by time. With due respect, the Division Bench judgment of the Delhi High Court in **Smt. Razia Begun's case (supra)** and judgment of Hon'ble the Supreme Court of India in **N.V.Shrinivasa Murthy and others's case (supra)** have dealt with the issue that failure of the plaintiff to seek declaration of a particular kind cannot entitle him to seek declaration claimed in the suit. It was not the issue in the referred authorities that if the plaintiff fails to seek further relief in a suit for declaration, the plaint is liable to be rejected under Order 7 Rule 11(d) of the Code or otherwise. That being so, the petitioner can not

derive advantage to its contention from the cited judgments.

Before parting with this order, it is pertinent to mention that counsel for the petitioner raised half-hearted arguments on equitable consideration. It is submitted that the petitioner has parted with huge amount running into several crores in favour of defendant No. 1 and has only bought litigation inter se the defendants and the one filed by the respondents/plaintiffs. It has been urged that the petitioner is ready to make a statement that it will not do any act that is prejudicial to the plaintiffs/respondents in respect of their claim qua two flats in regard whereof they have allegedly made payments running into several lakhs to defendant No. 1. According to counsel, two flats allotted to the plaintiffs should not be allowed to put the entire transaction entered inter se the defendants in jeopardy by entertaining suit that appears to be filed by the plaintiffs at the behest of defendant No. 1 to help him in the litigation inter-se the defendants.

Counsel for the petitioner may be right that two flats allotted to the respondents out of a big project has caused inconvenience for the petitioner but the petitioner was required in law to make all possible inquiries before entering into the transaction with defendant No. 1. One of the dictum of law of property is 'buyer beware'. This apart, the respondents/plaintiffs does not appear to have prayed for grant of injunction qua the entire subject matter of agreement to sell dated 25.10.2012. In case, an application in this regard is filed by the respondents/plaintiffs, the petitioner would be at liberty to raise available pleas qua limited interest of the plaintiffs. However, certainly this fact does

not constitute a ground for rejection of plaint.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. Nothing stated hereinbefore shall cause prejudice to the petitioner at the time of adjudication on merits.

(Rekha Mittal)

Judge

6.11.2017

paramjit

Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No