

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

+ **RFA (OS)(COMM) 12/2017**

Date of decision: 18th August, 2017

SUBHASH CHAND

..... Appellant

Through: Mr.Sunil Dalal, Mr.Ashish Sharma
and Mr.Deepak K. Sharma, Advs.

versus

M/S VERSATILE COMMOTRADE PVT LTD. Respondent

Through: Mr.Nikhilesh Krishanan, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

CM No.29146/2017 (exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CM No.29147/2017 (delay)

For the reasons stated in the application, delay of 50 days in re-filing appeal is condoned.

The application stands disposed of.

RFA (OS)(COMM) 12/2017 & CM No.29145/2017 (stay)

This intra-court appeal impugns the order dated 17.03.2017, by which application for leave to defend I.A. No.23676/2015 moved by the appellant Subhash Chand, who is defendant No.2, has been rejected.

2. The respondent to the present appeal namely Versatile Commotrade Private Limited, filed the suit under Order XXXVII of Code of Civil Procedure, 1908 for recovery of Rs.1,03,54,000/- with interest @ 18% p.a. with effect from 15th November, 2013, till the date of payment.

3. The impugned order would show and indeed the parties are not at lis that the appellant and his brother Chiranji Lal, who statedly expired on 3rd March, 2017, had received payment of Rs.1,03,54,000/- from the respondent. The aforesaid payment was made for purchase of agricultural land owned by the appellant and late Chiranji Lal. The details of land are as under:

“ (a) 1/3th share in total agricultural land measuring area 35 Bigha 9 Biswa, in Khata No. 101/100, in Khasra Nos/ 18//14 (4-16),17 (6-12), 24/2 (2-03), 25/2 (4-10), 45//6/2, (3-04), 15(4-16),16(4-16), 25(4-12), situated in the revenue estate of Village Surhera, Tehsil Najafgarh, New Delhi;

(b) 1/12 share in total agricultural land measuring area 6 Biswa, in Khata No. 102/101, in Khasra Nos. 18/25/1 (0-06), situated in the revenue estate of Village Surhera, Tehsil Najafgarh, New Delhi.

(c) 1/6 share in total agricultural land measuring area 6 Bigha 18 Biswa, in Khata No. 103/102, in Khasra Nos. 159 (3-18), 203 (3-0), situated in the revenue estate of Village Surhera, Tehsil Najafgarh, New Delhi.”

4. The respondent has placed on record the original agreement to sell dated 18th July, 2013 which bears the signatures of the appellant and late Chiranji Lal and their thumb impressions. The appellant does not deny his signature and thumb impression as well as the signature and thumb impression of late Chiranji Lal.

5. The contention of the appellant is that the agreement to sell was in fact executed on 18th April, 2013. However, no such agreement has been placed on record.

6. Appellant's contention that the date 18th July, 2013 as recorded is a mere typographical error or mistake has to be rejected. The original agreement to sell relied upon by the respondent would indicate that the electronic stamp paper was purchased on 23rd April, 2013. The respondent

had also given two cheques of Rs.40,27,000/- to the appellant and Chiranji Lal, both dated 23rd April, 2013. It is, therefore, difficult to accept the contention of the appellant that the agreement to sell was executed on 18th April, 2013.

7. Learned counsel for the appellant submits that the appellant and late Chiranji Lal were always ready and willing to sell the land to the respondent. He submits that the appellant had obtained No Objection Certificate from the authorities dated 7th November, 2013. Further, as per the finding recorded in the impugned judgment, time was not essence of the contract.

8. We have considered the said contention. In the facts of the present case, we do not find any reason and justification to reverse the impugned order.

9. The appellant and late Chiranji Lal had admittedly issued legal notice dated 20th July, 2013 to the respondent, asserting that the agreement to sell was entered on 18th April, 2013, but the date of execution was erroneously written and recorded as 18th July, 2013. This notice accepts that the appellant and late Chiranji Lal had received Rs.1,03,54,000/- as advance for which they had issued separate receipts. The claim was that

the balance amount was to be paid within 90 days from 18th April, 2013 i.e. on or before 18th July, 2013. In paragraphs 4 to 9 of the notice, it was stated as under:-

“4. That my clients have come to SR office for execution of sale deed on which agreement to sell executed between my client & you after obtaining NOC from competent authority as agreed both.

5. That my clients have waited for you for the execution of Sale Deed between you & my client & have tried to contact you many times.

6. That on 18/07/2013, my clients have even filed an application by SR-IX & mark his presence after waited for you on 18/07/2013. When you didn't come till 1. P.M for execution of Sale Deed on 18/07/2013. Telephonically to inform you that you have to come to SR office for registration of Sale Deed as per agreement to sell on dt.18/07/2013 between you my clients.

7. That I hereby again reminding you to pay the balance consideration amount & to execute a Sale Deed as my client is still willing to execute a Sale Deed with you as per agreement to sell executed between you & my client.

8. That I would like to intimate you that my clients have also obtained 'NOC' for transfer the above said land from

competent revenue authorities; this, requesting you to take an immediate step to execute the Sale Deed.

9. I call upon you to have the deed of conveyance executed by my clients against the payment of balance consideration amount within a stipulated period of 15 days from the receipt of this legal notice failing which the said agreement or any other document executed in contest of above stated property will stand cancelled & the advance/earnest money paid by you to my clients will stand forfeited & my client will take necessary action by the competent authorities. However, this is without prejudice to the rights of my clients to recover all costs, damages, losses & expenses incurred by him by reason of yours default in performing the said agreement.”

As per paragraph 8 of the notice, the appellant and Late Chiranjilal had obtained NOC for transfer of the land from the competent revenue authority. Further, the appellant and his brother had visited the office of Sub-Registrar for registration of the sale deed on 18th July, 2013 as was agreed in the agreement to sell but the respondent was not present and had not bothered to pay the balance sale consideration. The last paragraph had required the respondent to make balance payment within 15 days failing which the earnest money paid would be forfeited and the agreement would be treated as cancelled.

10. Thus, on failure of the respondent to make payment of the balance amount within 15 days, the appellant had declared that the agreement would be treated as cancelled. The appellant and his brother late Chiranji Lal did not at any time initiate proceedings seeking specific performance. They had treated the agreement as cancelled, and the money paid as forfeited. This being the position, the respondent was justified in treating the agreement as cancelled as stated by the appellant and his brother Late Chiranji Lal. The respondent was right in asking for refund of money paid.

11. The facts on record would, also, reveal that the aforesaid factual assertions made by the appellant were absolutely false and incorrect. The appellant and Late Chiranji Lal had applied for No Objection Certificate on 19th July, 2013 i.e. one day after the agreement to sell was executed. This factum is now accepted and admitted by the appellant. The application which is placed on record at page 96 of the appeal paper book would show that the respondent was described as the purchaser/vendee. This application for Non Objection certificate was verified/attested by the notary public on 19th July, 2013 and filed with the authorities on 19th July, 2013. Application for No objection certificate was rejected by the

authorities on 23rd August, 2013. The fact that the appellant applied for NOC on 19th July, 2013 itself indicates that the appellant could not have gone to the Sub-Registrar's office on 18th July, 2013.

12. In view of the aforesaid position, we find that the assertions made in the notice dated 20th July, 2013, quoted above, are absolutely bogus and wrong.

13. Even in the application for leave to defend, the appellant did not disclose that the NOC was applied on 19th July, 2013 and this application was rejected on 23rd August, 2013.

14. The appellant must bear the consequences of the dishonest and baseless assertions in the notice and pleading which were per se factually incorrect.

15. This being the factual position, we do not find any reason to interfere with the impugned order. The appeal as well as pending applications are dismissed with no order as to cost.

SANJIV KHANNA, J.

NAVIN CHAWLA, J.

AUGUST 18, 2017/vp