

\$~58.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. No.173/2017 & CM No.28270/2017 (for stay).
RAM RATI Petitioner
Through: Mr. B.D. Sharma, Adv.
versus
SATBIR & ANR Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER
% **08.08.2017**

CM No.28271/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

C.R.P. No.173/2017 & CM No.28270/2017 (for stay).

3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 22nd July, 2017 in CS No.306/2017 of the Additional District Judge, Pilot Court, Dwarka Court Complex, New Delhi) of dismissal of the application filed by the petitioner / defendant no.1 under Order VII Rule 11 of the CPC for rejection of the plaint in a suit for specific performance filed by the respondent no.1 / plaintiff.

4. The counsel for the petitioner / defendant no.1 has been heard.

5. Rejection of the plaint was sought on three ground, (i) specific performance having been sought of a Power of Attorney and not of an Agreement to Sell; (ii) the Sale Deed, execution of which was sought, being in violation of Section 33 and other provisions of the Delhi Land Reforms Act, 1954; and, (iii) the plaint lacking in averments within the meaning of

Section 16(c) of the Specific Relief Act, 1963.

6. The learned Additional District Judge, in the impugned order, has reasoned that the plaint read as a whole did not show lacunas on the first and third grounds aforesaid and the second ground aforesaid required trial and could not be subject to decision under Order VII Rule 11 of the CPC.

7. The counsel for the petitioner / defendant no.1 before me also has urged the first and the third grounds aforesaid.

8. Though undoubtedly the plaint is very poorly worded and it also appears that the draftsman thereof, while drafting the same, has not kept the law of pleadings and the of Specific Relief Act in mind but no error can be found in the reasoning in the impugned order of the plaint, read as a whole and unmindful of the language used, not suffering from the lacunas on which rejection is sought.

9. In dealing with the pleas of rejection of plaint on the ground of said lacunas in pleading, this Court has to be mindful of what was said by the Privy Counsel (in **(Maung) Kyi Oh Vs. Ma Thet Pon** AIR 1926 PC 29) with respect to mofussil pleadings in India. It was observed that the mofussil lawyers in the towns of India could not be expected to be deft in English language and those lacunas on their part in drafting have to be overlooked and cannot incur fatality. The said principle was carried on by the Supreme Court, even after India achieved independence till 1951 also in **Kedar Lal Seal Vs. Hari Lal Seal** AIR 1952 SC 47. Unfortunately inspite of another half a century having been passed and Delhi being the capital city, what was observed then in the British era remains true today as well. Reliance can be made to **Teva Pharmaceutical Industries Ltd. Vs. Natco Pharma Ltd.** 210

(2014) DLT 591 (DB) and *Rajesh Kumar @ Ramu Vs. Sunil Kumar* 2016 SCC OnLine Del 2982.

10. Else, the case of the respondent no.1 / plaintiff as deciphered from the plaint is that the petitioner / defendant no.1 has sold the land to the respondent no.1 / plaintiff for a total sale consideration of Rs.46,00,000/- and against receipt thereof executed possession letter receipt, registered Power of Attorney in favour of the respondent no.2 / defendant. The respondent no.1 / plaintiff in the suit has claimed the relief of “decree of specific performance to execute the sale deed through registered SPA or direct in favour of the plaintiff”.

11. The learned Additional District Judge, in the impugned order, has further rightly reasoned that law envisages an oral agreement to sell also and of which specific performance can be claimed. On a reading of the entire plaint it is quite evident that the claim of the respondent no.1 / plaintiff is of the petitioner / defendant no.1 having agreed to sell the land to the respondent no.1 / plaintiff and against receipt of entire sale consideration having put the respondent no.1 / plaintiff into possession of the property and the respondent no.1 / plaintiff is now seeking execution of the Sale Deed. Thus, no ground for rejection of the plaint on first of the aforesaid grounds is made out.

12. As far as the third ground aforesaid is concerned, though undoubtedly Section 16(c) of the Specific Relief Act requires the plaintiff in a suit for specific performance to aver that he has performed and has always been ready and willing to perform the essential terms of the contract which are to be performed by him and the plea in so many words is not to be found in the

plaint but again the learned Additional District Judge has correctly concluded that the readiness and willingness of the respondent no.1 / plaintiff is evident from the other averments in the plaint.

13. I may in this regard notice that the respondent no.1 / plaintiff has in para 20 i.e. the cause of action paragraph of the plaint, running into nearly two pages, given date-wise the steps taken by the respondent no.1 / plaintiff for enforcement of the agreement and else it is pleaded in the plaint that the entire sale consideration has been paid against the respondent no.1 / plaintiff being put in possession of the property.

14. The counsel for the petitioner / defendant no.1 has referred to ***Abdul Khader Rowther Vs. P.K. Sara Bai*** AIR 1990 SC 682, in para 12 whereof, pleadings in a suit for specific performance were discussed.

15. All that can be observed is that the case aforesaid was not of rejection of the plaint but of the pleas qua pleadings having been taken up for the first time in appeal.

16. I have already hereinabove observed that on a reading of all the averments in the plaint, the readiness and willingness of the respondent no.1 / plaintiff is writ large.

17. Thus no case for interference in the impugned order is made out.

Dismissed.

RAJIV SAHAI ENDLAW, J

AUGUST 08, 2017

‘pp’..