HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SMT. JUSTICE T. RAJANI

C.O.M.C.A.No. 9 of 2017

JUDGMENT: (per Hon'ble Sri Justice C.Praveen Kumar)

1) Assailing the order dated 29.08.2017 passed in C.O.S.S.R.No.1799 of 2017 on the file of the XX Additional Chief Judge, City Civil Courts, at Hyderabad, wherein the suit filed by the petitioner came to be rejected on the ground of limitation, the present appeal came to be filed under Section 13 of the Commercial Courts Act.

2) The question that falls for consideration is whether the trial Court was justified in rejecting the plaint by analyzing the contents of plaint and the title of the suit?

3) Heard learned counsel for the petitioner. There is no representation on behalf of the respondents. In fact on the last occasion the learned counsel for the respondents was directed to produce the sanctioned plan, which is neither filed before the trial Court nor produced before this Court till date.

4) It is not in dispute that the petitioner/plaintiff filed a suit for specific performance of memorandum of understanding dated 21.03.2011, directing the defendants to

execute a registered sale deeds in respect of the property involved therein and in the event of such a relief being not granted, a decree for recovery of money be passed directing the defendants to pay a sum of Rs.1,08,00,000/- to the plaintiff along with interest.

5) As seen from the averments in the plaint, the plaintiff and defendants are acquainted with each other. The 1st defendant along with 2nd defendant, who is carrying on construction business, took up various development projects in and around Kakaguda, Secunderabad. In furtherance of the same, the defendants approached the plaintiff for financial assistance for the project, which was sought to be undertaken upon 4000 square yards of land in Sy.Nos.51 to 54 situated at Karkhana, Secunderabad including 2000 square yards of land in Sy.No.51 to 54 situated at Karkhana, Secunderabad. The defendants promised to deliver the constructed portions of the said project within the particular period. In view of the acquaintance, the plaintiff invested a sum of Rs.1,00,00,000/- in the said project. Accordingly, the plaintiff and defendants entered into a memorandum of understanding (hereinafter referred to as "the MOU") dated 21.03.2011. It is stated that as per the MOU, the defendants agreed to deliver 20% of the constructed area, out of 50% falling to their share, after deducting 10%of the area towards

expenditure spent by the defendants in the land admeasuring 350 square yards in favour of the plaintiff by executing registered sale deed relating thereto. Subsequently, the defendants entered into a registered development agreement-cum-G.P.A. with one set of owners of the land admeasuring 4000 sq. yards in the year 2014 vide document No.454 of 2014. The defendants also entered into another development agreement with the owners of the land admeasuring 2000 square yards and took up construction on the site in the year 2015, after obtaining municipal sanction.

6) It is said that while construction was in a semi finished stage, the defendants started selling flats in favour of intending purchasers and appropriating the sale consideration derived therefrom without transferring the requisite constructed area to the plaintiff from out of the total constructed area falling to their share along with proportionate undivided share in the land. It is stated that in spite of repeated requests, the defendants failed to execute the registered sale deeds. Hence, the suit came to be filed.

7) It is also not in dispute that though the suit is titled as a suit for recovery of money but the relief sought for was for specific performance of MOU dated 21.03.2011 and also for recovery of money.

8) The trial Court rejected the suit on the ground that there is no cause of action for seeking specific performance of the MOU and the relief for recovery of money is barred by limitation. Challenging the same the present appeal came to be filed.

9) A reading of the order shows that the request came to be rejected on the ground that the MOU does not contain the schedule of property. The order also shows that the total extent of land in which the plaintiff invested is 700 square yards, out of which 50% is 350 square yards, but in the plaint they mentioned the schedule as 400 square yards. The trial Court further held the MOU shows that the defendants entered into a development agreement-cum-GPA with land owners for development of another land admeasuring 2000 square yards in Sy.Nos.51 to 54 and the plaintiff has invested a sum of Rupees one Crore for the purchase of the property. It also held that as per the MOU, the plaintiff is entitled to get 50% share out of 350 square yards where as in the plaint it is mentioned that the plaintiff is entitled to 400 square yards. In the absence of any schedule to the MOU, the Court below held that there is no cause of action for specific performance.

10) But a plain reading of the plaint and MOU which lead to filing of the suit, would show that there is reference to 400 square yards in the prayer portion as stated in the order. But in the body of the plaint there is reference to only 350 square yards. Though there is discrepancy with regard to extent of land, we feel that it cannot be said that there was no cause of action for specific performance of MOU. If the entire body of the plaint is read together, except the prayer and schedule, it shows that the claim of the plaintiff appears to be 50% of 350 square yards. The MOU also shows that both the parties have mutually agreed to share 50% of the constructed area equally out of 350 square yards. The second party is entitled to get 50% built up area out of 350 square yards from that of first floor and second floor of the complex. It was further agreed upon that the first party shall complete the project within 18 months from the date of obtaining sanctioned plan, subject to the grace period.

11) Since the averments in the plaint indicate that the sanctioned plan was obtained in the month of January, 2015 and as the respondents failed to produce the sanctioned plan evidencing that it was sanctioned prior to 2015, we feel that the findings of the trial Court that there was no cause of action and that the suit is barred by limitation, cannot be accepted.

12) Accordingly, the appeal is allowed. The Court below shall number the suit and proceed in accordance with law uninfluenced by the observations, if any, made in this order. There shall be no order as to costs.

13) Miscellaneous Petitions, if any, pending, shall stand closed.

C. PRAVEEN KUMAR, J

T. RAJANI, J

04.07.2018
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