

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

% **Date of decision: 15th May, 2018.**

+ **CS(OS) 24/2018 & IA No. 997/2018 (u/O XXXIX R-1 & 2 CPC)**

SUCHIBRATA DATTA CHOUDHURY **Plaintiff**

Through : Mr. Nishant Das, Ms. Vishakha
Gupta, Advs.

versus

SY ASSOCIATES PRIVATE LIMITED & ANR. **Defendants**

Through : Mr. Vishesh Wadhwa, Mr. Aditya
Swarup Agarwal, Advs. for D-1.
Ms. Amrita Chatterjee, Mr. Abhay
Vohra, Advs. for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit for specific performance of a Collaboration Agreement dated 13th May, 2017 entered into by the plaintiff and the defendant no.2 namely Swagata Barua on one hand, with the defendant no.1 on the other hand, for redevelopment by the defendant No.1 of the property No.B-322, Chittaranjan Park, New Delhi-110019 of the plaintiff and the defendant no.2.

2. The case of the plaintiff is that the defendant no.1 is not going ahead with the work under the Collaboration Agreement, taking the plea of another Agreement having been entered into with the defendant no.2, purportedly also on behalf of the plaintiff, whereunder the defendant no.1, in addition to the ground floor and third floor with terrace etc. and Rs.1,40,00,000/- originally agreed to be given/paid by the defendant no.1 to the plaintiff and the defendant no.2, has also agreed to give/pay the basement floor and Rs.30,00,000/-.

3. The suit came up first before this Court on 22nd January, 2018 when the defendant no.1 appeared on caveat and stated that he has no objection to going ahead with the Collaboration Agreement and completing the works thereunder within the stipulated time.

4. It was enquired from the counsel for the plaintiff on 22nd January, 2018 that what could possibly be the objection of the plaintiff, if the defendant no.1 is willing to give money and floor in addition to what it had agreed to give under the Collaboration Agreement.

5. The counsel for the plaintiff stated that it was being given under the Agreement with the defendant no.2 only and to which Agreement plaintiff was not a party.

6. Observing, that even if it was so, the remedy of the plaintiff was to sue the defendant no.2 for partition thereof and not to sue for specific performance and that the suit appeared to be misconceived, but to ensure that the litigation between the parties comes to an end, it was deemed appropriate on 22nd January, 2018, to hear the defendant no.2 as well and thus summons of the suit and notice of the application for interim relief were issued and in the meanwhile the defendant no.1 directed to go ahead with the work of construction under the Collaboration Agreement as agreed and it was further directed that any dealings of the defendant no.1 with the property thereafter shall be subject to orders in this suit.

7. On 14th May, 2018, the counsel for the defendant no.2 appeared and stated that written statement had been filed. However, the written statement of the defendant no.2 was not on record. Be that as it may, it was enquired from the counsel for the defendant no.2, whether not the plaintiff and the defendant no.2 were owners in equal share of the property. The counsel for

the defendant no.2 replied in the affirmative.

8. It was next enquired from the counsel for the defendant no.2 as to what was the entitlement of the defendant no.2 to exclusively appropriate to herself additional money and additional floor of the property to be built by the defendant no.1. The counsel for the defendant no.2 stated that the defendant no.2, after the Collaboration Agreement, had to the exclusion of the plaintiff negotiated with the defendant no.1 for additional money and additional floor. However the counsel for the defendant no.2 had no answer, that even if the defendant no.2 owing to her exclusive negotiation had been able to extract additional monies and additional floor from the defendant no.1, what was the entitlement of the defendant no.2 to exclusively appropriate the same to herself and to the detriment of her co-owner i.e. the plaintiff herein.

9. Observing, that the defendant no.2 appeared to be acting dishonestly, on 14th May, 2018, the personal presence of the defendant no.2 for today was directed.

10. The defendant no.2 as identified by her Advocate is present in the Court. However the defendant no.2 also on enquiry, though admits that she and the plaintiff are the owners in equal share of the property, in response to the query as to her entitlement to additional money and additional floor to the exclusion of the plaintiff, states that it was the original understanding with the defendant no.1 that the basement would fall to the share of the plaintiff and the defendant no.1 but the defendant no.1 did not incorporate it in the Collaboration Agreement and informed the defendant no.2 that it was defendant no.1's separate understanding with the defendant no.2. Qua the additional Rs.30,00,000/-, the explanation given is even more fantastic. It is

stated that the defendant no.1 had volunteered to give said amount to the defendant no.2 “towards taxes”.

11. The counsel for the defendant no.1 denies any such thing.

12. It appears that either the defendant no.1 was known to the defendant no.2 from before or that the defendant no.2 had first approached the defendant no.1 and had arrived at terms with the defendant no.1 but when subsequently introduced the defendant no.1 to the plaintiff, did not disclose all terms agreed with the defendant no.1 and qua which terms which were not disclosed, separate Agreements were executed.

13. The counsel for the plaintiff as well as the counsel for the defendant no.1 state that the defendant no.1 is carrying out the work of redevelopment as per schedule and the counsel for the defendant no.1 also states that the defendant no.1 will complete the works as agreed.

14. The counsel for the defendant no.1 on enquiry states that the additional amount of Rs.30,00,000/- which has been agreed by the defendant no.1 to be paid to the defendant no.2 has not been paid by the defendant no.1 as yet.

15. In the aforesaid circumstances, this suit is disposed of:-

(i) By directing the defendant no.1 to:-

- (a) pay all amounts to be paid by the defendant no.1, whether under the Collaboration Agreement or under the separate Agreement with the defendant no.2, equally to the plaintiff and to the defendant no.2, at the same time; and,
- (b) hand over vacant peaceful physical possession of the entire portion of the redeveloped property of the share of the plaintiff and the defendant no.2, whether under the

Collaboration Agreement or under the separate Agreement with the defendant no.2, at the same time and jointly to the plaintiff and the defendant no.2.

- (ii) By directing the defendant no.2, who is found to have acted dishonestly, to pay costs of Rs.1,00,000/- to the plaintiff.

Decree sheet be drawn up.

MAY 15, 2018

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RAJIV SAHAI ENDLAW, J



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