

\$~SC-Regular Matter-5

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

+ **RFA 112/2013**

SAIF UL ISLAM

..... Petitioner

Through: None.

versus

ROSHAN LAL ARORA AND ANR.

..... Respondents

Through: Ms. Chandrika Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **19.07.2018**

1. This Regular First Appeal under Section 96 CPC is filed by the plaintiff in the suit impugning the judgment of the Trial Court dated 29.11.2012 by which the trial court has dismissed the suit for specific performance filed by the appellant/plaintiff for property being T-222, Ward No. 14, measuring about 68 sq. yards at Ahata Kidara, Nawab Road, Sadar Thana, Delhi-6.

2. The appellant/plaintiff pleaded existence of an Agreement to Sell on 5.1.1996, and which is only an oral Agreement to Sell. Appellant/plaintiff also pleaded an earlier Written Agreement dated 5.12.1995, however, admittedly this agreement was not signed by the defendant no. 1/seller. Trial court has therefore held that there is no *consensus ad idem* between the parties and parties did not enter into between them an Agreement to Sell.

3. In a suit for specific performance a plaintiff has to prove his readiness i.e. financial capacity, in view of Section 16(c) of the Specific Relief Act, 1963.

4. In the present case it is seen that appellant/plaintiff has failed to lead any documentary evidence whatsoever with respect to his financial capacity to pay the balance sale consideration of Rs.5,19,000/-. Self serving averments cannot prove financial capacity and as held by this Court in the case of **Shri Baldev Behl and Ors. Vs. Bhule & Ors.** CS(OS) No. 2458/1989 decided on 10.9.2012 and paras 26(i) and (ii) of which read as under:-

"26(i). This issue pertains to plaintiff No.1 being ready and willing to perform his part of the agreement to sell. As per Section 16(c) of the Act, every plaintiff in a suit for specific performance must aver and prove that the plaintiff has always been and continues to be ready and willing to perform his part of the contract/agreement to sell. Readiness is financial capacity to go ahead with the agreement to sell and willingness is the intention. I may, at this stage, specifically invite attention to the observations of the Supreme Court in the case of **Balraj Taneja and Anr. (supra)**, and relevant paras have been reproduced above, and which show that in a suit for specific performance even if there is no defence of the defendant, yet, the aspect of readiness and willingness has to be specifically proved by the plaintiff. This is stated by the Supreme Court in para 30 of the said judgment. The question is whether the plaintiff No.1 has proved his readiness and willingness at the relevant time and also continues to be ready and willing to perform his part of the contract/agreement to sell.

(ii) Readiness to perform the obligations by a proposed purchaser is a very important aspect and it has to be proved by categorical evidence. Mere oral evidence and self-serving depositions cannot be a substitute for categorical evidence on the specific statutory requirement of Section 16(c). It is not disputed on behalf of the plaintiff No.1 that plaintiff No.1 has not filed any income tax returns or any bank account or proof of any other assets/properties or any other evidence to show the financial capacity of the plaintiff No.1 to pay the balance sale consideration. As per the case of the plaintiff No.1, the balance sale consideration would be approximately Rs.19.5 lacs and there is no evidence worth the name in the

record to show the plaintiff No.1's financial capacity for this amount. Of course, while on this argument, I am assuming that there is a certainty as to consideration because in reality there is no certainty as to balance sale consideration inasmuch as the plaintiff No.1 has failed to exercise the option in terms of the agreement to sell as to which area of the balance land less the hutment/portion the plaintiff No.1 seeks specific performance of. Also, as already stated above, this area claimed by the plaintiff No.1 has to be further conditioned by an area of 12 bighas which has already been sold to be defendant No.3 under the sale deed dated 8.4.1988. In any case, I need not state anything further inasmuch as there is not a single piece of paper on record or any credible evidence which proves the financial capacity of the plaintiff No.1. I accordingly hold that plaintiff No.1 has miserably failed to prove his readiness to perform his obligations under the agreement to sell dated 27.8.1988. In fact, even willingness on the part of the plaintiff No.1 is absent inasmuch as there is no certainty of any option exercised by the plaintiff No.1 as to specific area which the plaintiff No.1 seeks to purchase, and which specific area had necessarily to be clear inasmuch as there is the issue of lessening the area whether on account of hutments or on account of 12 bighas of land already purchased by the defendant No.3 vide sale deed dated 8.4.1988 and hence of clarity as to for what area and for what price the agreement to sell has to go ahead."

5. In view of the aforesaid, trial court in the *prima facie* opinion of this Court, has rightly dismissed the suit.

6. Since no one is present for the appellant, this appeal is dismissed in default and for non-prosecution.

7. Let no application for restoration or recall of this order be entertained unless costs of Rs.25,000/- are paid to the respondent no. 1/defendant no.1.

VALMIKI J. MEHTA, J

JULY 19, 2018

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