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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 20th February, 2018

+ C.R.P. 31/2018

SWARN SINGH

..... Petitioner

Through: Mr. Manav Gupta with Ms. Esha
Dutta & Mr. Sahil Garg, Advocates.

versus

SURINDER KUMAR & ORS

..... Respondents

Through: Mr. J.P. Sengh, Senior Advocate with
Ms. Jyoti Mendiratta, Ms. Aastik
Dhingra, Ms. Manisha Mehta,
Ms. Vaishal Tanwar & Ms. Mrigna
Shekhar, Advocates.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

Caveat No.137/2018

Since the counsel for the caveator has appeared, the caveat stands discharged.

CM No.6375/2018 (exemption)

Allowed, subject to all just exceptions.

C.R.P. 31/2018 & CM No. 6374/2018

1. The petitioner is the plaintiff of civil suit presently registered as CS No.7179/16 pending on the file of Additional District Judge-05, South District, Saket. The suit, as instituted, was for a decree of specific performance on the basis of receipt-cum-agreement dated 16.06.1993 followed by two other agreements dated 11.12.1993 and 11.01.1995. As per the case of the plaintiff, the subject property was to be sold to him for a total consideration of Rs.29,25,000/-, he having claimed that he had paid the entire consideration to the respondents (defendants) who, in turn, had failed to execute the necessary documents.

2. The respondents/defendants are contesting the suit, *inter alia*, on the plea that the agreement which could be enforced was entered upon on 15.03.1993 and followed by another agreement dated 15.04.1993 and that the total consideration settled between the parties for such sale was Rs.1,89,94,791/-, the defendants having acknowledged the receipt from the plaintiff a total amount of Rs.48.25 lakhs.

3. The plaintiff, thereafter, moved an application for amendment of the plaint so as to plead that sale consideration settled was Rs.1,89,94,791/-, as pleaded by the defendants, and that he had already paid the entire sale consideration and thus the payment actually made being inclusive of amount of Rs.48.25 lakhs as acknowledged by the defendants. The application for amendment was allowed by the learned Single Judge of this Court at a stage where the

case was pending on the original side of this Court. The said order, upon being challenged [in FAO(OS) No.103/2008] was set aside by judgment dated 21.05.2008 by a division bench of this Court. It is conceded that the plaintiff thereafter had moved SLP before the Supreme Court but without success.

4. By order dated 19.11.2008 issues were framed to take the case to trial, the first and sixth issues, on which this order must focus, reading as under:-

“1. Whether the agreement of the year 1993 between the parties was as set out in the plaint dated 25th January, 1997 or as pleaded by the defendants? OPPr

6. Whether the agreement of the year 1993 stood novated? OPD.”

5. During the course of trial at the stage of evidence, the plaintiff wanted to bring on record documents purporting to show payment of consideration, in cash, beyond the amount of Rs.48.25 lakhs to the defendants. The plaintiff concededly having submitted such documents with his affidavit in evidence, himself de-exhibited them. Later, he wanted to tender these documents during cross-examination of the defendant which was repelled. He approached this Court by Civil Revision No.278/2017 which was disposed of by order dated 17.01.2018 it having been withdrawn, the plaintiff having taken the liberty to move an application before the trial court for reframing/recasting of issue no.1 as framed on 19.11.2008 and, thereafter, to move another application for liberty to confront the first defendant in his testimony (as DW-1) with documents in the above-

mentioned nature.

6. It appears that the plaintiff, instead of seeking reframing of first issue, moved an application before the trial judge seeking recasting of several of the issues. The learned trial judge vide order dated 07.02.2018, which is impugned by the petition at hand, has reframed issues No.1 and 6, as requested by the plaintiff, they now taking the following shape:-

“Issue No.1: Whether the agreement between the parties consists of the receipts cum agreement dated 16.06.1993, 11.12.1993 and 11.01.1995 for a total sale consideration of Rs.29,25,000/- as pleaded by the plaintiff, or the agreement consists of the receipt cum agreement dated 15.03.1993 and the agreement dated 15.04.1993 for a total sale consideration of Rs.1,89,94,791/- as pleaded by the defendants? OPPr.

Issue no.6:- Whether the agreement consisting of the receipt cum agreement dated 15.03.1993 and the agreement dated 15.04.1993 stood novated in the year 1995? OPD”

7. The request for fresh evidence to be allowed to be adduced after reframing of the issues, however, has been rejected by the trial judge observing that no new issues have been framed. It is the said view which is sought to be assailed by the petition at hand.

8. The plaintiff, by his application before the trial court, had suggested the reframing/recasting of issue no.1, as framed on 19.11.2008, by it being split up into two issues, his formulation reading thus:-

“1. Whether the agreements between the parties was as

set out in the plaint, i.e. dated 16.06.1993, 11.12.1993 and 11.01.1995 for a total sale consideration of Rs.29,25,000/-? OPP.

2. Whether the agreements between the parties was as set out in the written statement, i.e. dated 15.03.1993 and 15.04.1993, for a total sale consideration of Rs.1,89,94,791/- and the defendants had only received a sum of Rs.48.25 Lakhs? OPD.

9. It appears the learned trial judge, instead of splitting up the issue with respect to the contentions of both sides, has chosen to go by the previous arrangement by merging the issue respecting the different set of agreements relied upon by both sides into one.

10. Learned senior counsel for the respondents fairly agrees that issue No.1 ideally should have been split up into two issues, clearly placing the burden with respect to the agreements set up by the parties at their door in terms of the pleadings. He also fairly agrees that the consideration paid at the time of novation of the agreement in 1995, an event which is subject matter of issue No.6, as now reframed by the trial court, also ought to have been reflected clearly and correctly in the issues.

11. Thus, the issues No.1 and 6 are reframed as under:-

1(a). Whether the agreements between the parties was as set out in the plaint, i.e. dated 16.06.1993, 11.12.1993 and 11.01.1995 for a total sale consideration of Rs.29,25,000/-? OPP.

1(b). Whether the agreements between the parties was as set out in the written statement, i.e. dated 15.03.1993 and 15.04.1993, for a total sale consideration of

Rs.1,89,94,791/- and the defendants had only received a sum of Rs.31.25 Lakhs? OPD.

6. Whether the agreement consisting of the receipt cum agreement dated 15.03.1993 and the agreement dated 15.04.1993 stood novated in the year 1995, plaintiff having paid an amount of Rs. 17 lakhs at that stage? OPD.

12. The learned counsel for the petitioner/plaintiff submits that he does not press for any further relief at this stage as he reserves his right to move before the trial court an amendment application to bring in the prayer for grant of compensation in terms of Section 21 of the Specific Relief Act, 1963.

13. The petition and the application filed therewith are disposed of in above terms.

R.K.GAUBA, J

FEBRUARY 20, 2018

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