

\$~9

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 10th October, 2018

+

CS (OS) 276/2014

M/S HBR CHEMICALS PVT LTD.

..... Plaintiff

Through: Mr. Sunil Verma and Mr. K. R.
Chawla, Advocates. (M:9811105226)

versus

KAILASH NATH & ASSOCIATES & ORS. Defendants

Through: Mr. Sandeep Kumar, Advocate for D-
2 & 3. (M:9999684531)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present suit for recovery has been filed by the Plaintiff seeking recovery of a sum of Rs.2,09,13,750/-.
2. The brief background of the dispute is that the Defendant No.2 was the owner of land measuring about 66.53 acres situated at Bara Hindu Rao/Kishan Ganj, Delhi. Various agreements were entered into by Defendant No.2 (DCM Ltd.) in respect of the said land. A tripartite agreement dated 24th November, 1988 was entered into between Defendants No.1 and 2 and Ansal Properties and Industries. As per this agreement, DCM Ltd. appointed Defendant No.1 - Kailash Nath & Associates to jointly undertake and execute the construction of flattened factories and residential flats in the said project. None of the said agreements are subject matter of the present suit.
3. The Plaintiff booked five flats measuring about 400 sq. ft. each in the DCM Techno Plaza. The full consideration was paid for the said booking.

Five provisional booking agreements dated 20th December, 1995, 21st December, 1995, 22nd December, 1995, 23rd December, 1995 and 26th December, 1995 were entered into. The payments of the following sums were made by the Plaintiff.

CHEQUE NO.	DATE OF ISSUE	AMOUNT PAID (Rs.)	DRAWN ON	RECEIPT NO.
233685	20.12.1995	9,90,000/-	State Bank of Saurashtra, CP, New Delhi	1567
233686	21.12.1995	9,90,000/-	State Bank of Saurashtra, CP, New Delhi	1568
233687	22.12.1995	9,90,000/-	State Bank of Saurashtra, CP, New Delhi	1569
23688	23.12.1995	9,90,000/-	State Bank of Saurashtra, CP, New Delhi	1570
233689	26.12.1995	9,90,000/-	State Bank of Saurashtra, CP, New Delhi	1571

A total of Rs.49,50,000/- was paid by means of five cheques issued by the Plaintiff. Pursuant to the payments being made, five agreements to sell dated 2nd April, 1997 were entered into and the flats were to be handed over to the Plaintiff within a period of 66 months, which period ended in June, 2001.

4. Admittedly, the project did not take off and no construction was made as there were disputes between Defendants No.1/2 and M/s Ansals Ltd. The

Plaintiff was informed of the said disputes, and the factum of the settlement having taken place only vide letter dated 27th July, 2001. The Defendant No.1 had collected a large sum of money from various persons including the Plaintiff. The Plaintiff addressed letter dated 12th January, 2002 to Defendant No.2 enquiring the status of its booking. While the Plaintiff continued to follow up, it was informed that Defendant No.2 had entered into an arrangement with Defendant No.3 wherein the entire land has been transferred to DEIL Limited. The Plaintiff submits that the agreements to sell dated 2nd April, 1997 were not honoured and accordingly since the project may not even commence in the near future, it decided to file a complaint under the Consumer Protection Act.

5. In the said complaint filed before the State Consumer Disputes Redressal Commission, order dated 30th August, 2013 was passed dismissing the complaint as the same was hit by Sections 21(1)(d)(ii) of the Consumer Protection Act. In view of this order, the present suit has been filed seeking recovery of the sums paid, along with interest.

6. In the written statement filed on behalf of Defendants No.2 and 3, the main ground that is taken is of limitation. Apart from the same, various justifications have been given to justify the delay in construction in the construction of DCM Techno Plaza which was re-christened as Central Square. Insofar as the factum of payment is concerned, the same is not denied but it is submitted that there are other formalities etc. which have to be completed Plaintiff. The execution of the agreements to sell dated 2nd April, 1997 is not denied.

7. The suit was instituted on 18th January, 2014. Vide order dated 19th April, 2017, a Learned Single Judge of this Court, while considering the

application filed under Section 14 read with Section 5 of the Limitation Act and an application under Order VII Rule 11 filed by the Defendant observed as under:

“Record shows that this suit has been filed on 20.11.2013. The cause of action in favour of the plaintiff had accrued after 66 months of the agreements entered into between the plaintiff and the defendants. These agreements are of the year 1995 but defendant No.1 having assured the plaintiff that the flats would be constructed within the timeline of 66 months, this period expired in June, 2001. On 12.01.2004, the plaintiff preferred his remedy before the State Consumer Commission. He filed a claim for the return of his money which he had paid to defendant No.1 i.e. a sum of Rs.49.50 lacs along with interest. Admittedly, these proceedings remained pending before the State Consumer Commission up to 01.10.2013 when they were finally disposed of. The present suit has been filed, at the cost of repetition, on 20.11.2013 i.e. within less than two months from the date of the dismissal of the proceedings before the State Consumer Commission.

Under Section 14 of the Limitation Act, proceedings which have been conducted bonafide in a Court which does not have the jurisdiction may be excluded for the purpose of limitation. The emphasis is on the prosecution in good faith in a wrong jurisdiction. This is essentially what has to be established and shown by the plaintiff who seeks the benefit of Section 14. The expression ‘good faith’ qualifies prosecuting of a proceeding in a Court which is ultimately found to have no jurisdiction; it is pursuance of a wrong remedy in a wrong Court.

In Jugal Kishore (supra) where a suit for recovery was bonafidely being prosecuted in a wrong forum i.e. the Consumer Forum and the plaintiff had not approached the Civil Court, the Bench of this Court was of the view

that the plaintiff should not be thrown out unheard; benefit of Section 14 should have been awarded to such a litigant who had filed his complaint before the Consumer Forum but because of inherent lack of jurisdiction, the Consumer Forum could not have entertained his plaint. Learned counsel for the plaintiff rightly points out that this judgment would be wholly applicable to the scenario of the instant case.

This Court is of the view that the benefit of Section 14 of the Limitation Act i.e. the period spent by the plaintiff in prosecuting the case in a wrong form which exercise was bonafide and in good faith i.e. in wrong Court should be excluded; if the said period is excluded the suit of the plaintiff would be within time.

This Court notes that the judgments relied upon by the defendant would not be applicable to the factual scenario of the instant case. In both the aforementioned judgments, the Court of the view that the proceedings being preferred by the plaintiff were neither bonafide and nor in good faith; there was a total absence of good faith which was the reason why the benefit of Section 14 of the Limitation Act had not been accorded in favour of that litigant. In the instant case, the version is otherwise. The plaintiff had filed proceedings in the Consumer Forum within the period of limitation i.e. on 12.01.2004 which period had to be counted from June, 2001 (after the expiry of the period of 66 months). There is nothing on record which could suggest that the action of the plaintiff in filing his complaint before the State Consumer Commission was with no other intention but for the intent of making an effort to recover his money which he had paid to defendant No.1. This Court is of the considered view that such a party cannot go unheard.

Accordingly, I.A. No.1843/2014 filed by the plaintiff for condonation of delay is allowed.

As a necessary consequence, the application under Order VII Rule 11 of the Code is dismissed.”

8. As per the above order, the Plaintiff was given benefit of Section 14 of the Limitation Act during the period when it was pursuing proceedings before the State Consumer Dispute Redressal Commission. Thereafter, parties attempted settlement which did not work out.

9. The matter is listed for framing of issues. However, a perusal of the pleadings shows that the fact that the Plaintiff had deposited the amounts for booking of five flats is not disputed as per the pleadings. A perusal of the response to paras 5 to 9 of the reply on merits shows that -

- the payments have not been denied.
- The execution of the booking agreements is not denied and the
- agreement to sell is not denied.

However, the Defendant merely states as under:

“5-9 Contents of paras under reply are denied as wrong and incorrect. Plaintiff be put to strict proof in respect of averment regarding booking of five units/flats in DCM Tecno Plaza and payment of full consideration to defendant no.1. It is stated that a bare perusal of copy of the alleged agreements to sell dated 02.04.1997 reveal that consideration was not paid in full and any averment to payment of full consideration is false and mischievous. The averment that defendant no.1 represented to the plaintiff that there are no dues outstanding as against the authorities concerned and that all formalities with regard to the approvals, sanctioning of the plans etc. have been completed is denied as wrong and incorrect.”

10. During the course of the arguments, learned counsel for the Defendant submitted that though the tower in which the Plaintiff had booked the flats is not available, there is another tower in which the Defendants are willing to

allot space to the Plaintiff.

11. The present being a commercial dispute, it is not necessary that every suit has to go to trial. The stands of the respective parties clearly show that the payments are being admitted, the factum of non-allotment of the flats being admitted, the agreement to sell and other documents are being admitted, no useful purpose is served in sending the matter to trial.

12. In the written statement, the Defendant has tried to justify the delay in the allotment by giving the entire chronology of events leading to the project DCM Techno Plaza becoming Central Square. The Defendants admit that the completion certificate for Plaza-2 has been applied for but is still pending. Thus, the Defendant seeks to justify the non-allotment for such a long period.

13. The learned counsel for the Plaintiff submits that his client is no longer interested in taking space in the alternate tower being offered by the Defendants inasmuch as the Plaintiff had made the booking for the purpose of office premises and the Plaintiff has already taken alternate premise. The Defendants have enjoyed the sum of Rs.49,50,000/- paid by the Plaintiff since the year 1995 i.e. for 23 years. Admittedly, the Defendants ought to have given an offer to the Plaintiff to take refund of the amount which they have enjoyed for 23 years. But the Defendants chose to continue to litigate with the Plaintiff without any basis. The Defendants' conduct is mala fide and dishonest to say the least.

14. There being no issue requiring oral evidence, in the present case, parties were heard finally in the matter. The facts set out above demonstrate that the payment of the Plaintiff is liable to be refunded by the Defendants. However, the Defendants are also liable to pay interest on the sum paid by

the Plaintiff. The suit is decreed in the sum of Rs.49.5 Lakhs along with interest @ 8.5 % per annum from 2005 to 2015 and with interest @ 7.5 % per annum from 2015 to 2018. The said payment shall be made within a period of eight weeks failing which an interest @ 12% per annum on the decretal amount till realisation shall be liable to be paid.

15. In the facts and circumstances of the present case, costs of Rs.50,000/- are also imposed on the Defendants, to be paid to the Plaintiff within eight weeks.

16. The suit is disposed of.

PRATHIBA M. SINGH
JUDGE

OCTOBER 10, 2018/dk/Rahul

सत्यमेव जयते