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

\+ CS(OS) 456/2016

HYDEL CONSTRUCTIONS PRIVATE LIMITED ..... Plaintiff

Through: Mr. Ravi Gupta, Sr. Adv. with Mr. Akhil Sachar, Ms. Sunanda Tulsyan, Mr. Sachin Jain and Ms. Diya Kapoor, Advs.

Versus

TEJINDER SINGH LASCHAR ..... Defendant

Through: Ms. Amrit Kaur Oberoi, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

<u>O R D E R</u>

% **06.03.2019**

<u>IA No.16841/2018 (of defendant u/O VII R-11(a),(b)&(d) CPC)</u>

1. The defendant in this suit for specific performance of an agreement of sale of immoveable property seeks rejection of the plaint on the grounds of (i) the suit claim being barred by time; (ii) the suit being not valued correctly for court fees and jurisdiction; and, (iii) the plaint not disclosing cause of action.

2. The application came up first before this Court on 10th December, 2018, when the senior counsel for the plaintiff appeared on advance notice; recording that there is no need for reply to such an application which is to be decided on the basis of averments in the plaint and legal submissions, the hearing, on request, was adjourned to today.

3. The counsel for the defendant and the senior counsel for the plaintiff have been heard.

4. The counsel for the defendant, with respect to the ground of limitation has argued (a) that the agreement between the parties was, what has come to be known in common parlance, a 'Collaboration Agreement'; (b) that the plaintiff, by purchase of portions of the immoveable property from the two brothers of the defendant, had become the owner of the ground and second floors and 1/3rd rights in the terrace above the second floor and the defendant was the owner of the first floor and 2/3rd rights in the basement, if any constructed in the property in future and the 1/3rd rights in the terrace above the second floor; (c) that as per the averments in the plaint, the Collaboration Agreement is dated 5th June, 2002 / 27th July, 2002 and construction thereunder was to be completed within 12 months i.e. by 4th June, 2003 / 26th July, 2003; (d) that the present suit has been filed on 7th September, 2016 i.e. after nearly 13 years from the date of completion of construction; (e) that the plaintiff had sent a letter dated 14th February, 2015 to the defendant and wherein the plaintiff had written that the plaintiff, since the completion of construction, had been requesting the defendant to execute the sale deed with respect to 2/3rd of basement and 1/3rd of terrace above second floor and which means that the defendant, inspite of request of the plaintiff since 4th June, 2003 / 26th July, 2003, had not executed the sale deed; and, (f) that the averments in para 22 of the plaint, that the plaintiff demanded execution of sale deed just prior to the institution of the suit, are thus contrary to the letter dated 14th February, 2015.

5. The counsel for the defendant, with respect to the ground of valuation, has drawn attention to para 30 of the plaint, where without disclosing the basis, the suit has been valued for the purpose of court fees and jurisdiction at Rs.2,00,01,000/-.

6. It is generally argued that there is thus no cause of action for the suit.

7. Per contra, the senior counsel for the plaintiff has drawn attention to the collaboration agreement, particularly to para 26 of page 49 thereof, in Part III file, to contend that though the same provides for execution of sale deed by the defendant in favour of the plaintiff of 2/3rd of the basement and 1/3rd of the terrace above the second floor, but no time thereof has been prescribed. It is contended that the plaintiff first had notice of the refusal of the defendant within the meaning of Article 54 of the Schedule to the Limitation Act, 1963, to execute the sale deed, when the defendant inspite of notice/demand preceding the suit did not execute the sale deed.

8. With respect to cause of action, it is stated that since the defendant has not executed the sale deed, the cause of action does exist for the suit.

9. With respect to the valuation, it is stated that the valuation of Rs.2,00,01,000/- is as per the value of the share with respect to which execution of sale deed is sought.

10. On enquiry, whether the said valuation is as per the prevalent circle rates, the senior counsel of the plaintiff, on instructions, states that the plaintiff is willing to pay the additional court fees on enhanced valuation, if any.

11. With respect to the letter dated 14th February, 2015, it is stated by the senior counsel for plaintiff that even if what is stated therein is believed, the

same does not amount to the defendant at any time refusing to execute the sale deed and thus since no date of performance was specified, limitation for the suit commenced when the defendant inspite of demand did not execute the sale deed.

12. It is otherwise informed that the plaintiff, since completion of construction, is in possession of the portions with respect whereto execution of sale deed is sought.

13. I have considered the rival contentions. Not only merit is found in the contention of the senior counsel for the plaintiff qua Article 54 of the Schedule to the Limitation Act but even otherwise, as per the dicta of this Court in ***Ansal Properties & Industries Pvt. Ltd. Vs. Dr. Anand Nath*** 1991 SCC OnLine Del 505 followed in ***Kaiser Lands Vs. Ethel Robinson*** 2008 SCC OnLine Del 1100 and ***Sarla Mehra Vs. Parleen Chopra*** 2009 SCC OnLine Del 1025, a Collaboration Agreement, after performance, is in the nature of exchange, where the rights of the land owner in the land are exchanged for the constructed raised by the developer.

14. On enquiry, the counsel for the defendant states that the defendant has not taken any action against the plaintiff for recovery of possession of the portions of the re-developed property of which sale deed is sought by the plaintiff from the defendant.

15. It is thus felt that once the nature of the agreement is of exchange and the parties are in possession of their respective portions as per the Collaboration Agreement, vesting absolutely of title in the respective portions should not be interfered with at a stage under Order VII Rule 11 of the Code of Civil Procedure, 1908.

16. Once the defendant inspite of demand has not executed the sale deed, it cannot be said that the suit is without any cause of action.

17. As far as the ground of valuation is concerned, the plaintiff to within four weeks of today file an affidavit in this Court along with supporting documents viz. report of valuer etc. showing the value as per circle rates of the property qua which execution of sale deed is sought and if the said valuation is in excess of Rs.2,00,01,000/-, the plaintiff shall be liable to pay additional court fees thereon.

18. Save for aforesaid, the application is dismissed.

CS(OS) 456/2016 & IA No.11125/2016 (u/O XXXIX R-1&2 CPC)

19. The suit is ripe for framing of issues.

20. I have however enquired from the counsels, what is the dispute. It appears that though settlement is possible but neither have the counsels given any thought to it nor the parties and are instead, blindly litigating.

21. Limited time of two weeks is given to the counsels to amicably mutually settle the matter, otherwise after two weeks, the consequence shall follow.

22. List on 11th April, 2019.

RAJIV SAHAI ENDLAW, J.

MARCH 06, 2019
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