IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.08.2020

Delivered on : 08.09.2020

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.No.816 of 2020
in
C.S.No.639 of 2019

Nazeer Mohammed ... Applicant

Vs

OPG Business Centre Private Ltd.,
foremrly called as OPG Wnd Farms Pvt. Ltd.,
No.4, Thiru.Vi.Ka. 3rd street,
Mylapore, Chennai – 600 004
Represented by its Authorized Signatury
Mr.Vishal Keyal . .. Respondent

Prayer: Judges Summons filed under Order XIV Rule 8 of Original Side Rules, Under Order VII Rule 11 of the Code of Civil Procedure to reject the plaint since the suit filed based on illusory cause of action filing plaint and affidavit with false averments, suppression of fact and barred by limitation hence it is a clear abuse of process of Court.

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For Applicant : Mr.B.Ullasavelan

For Respondent : Mr.M.Sriram

ORDER

The above application is filed to reject the plaint in C.S.No.639 of 2019.

2. The brief resume of the facts which has resulted in the filing of the application in question is narrated herein below.

3. The applicant is the owner of the property described in the plaint schedule. The respondent had entered the premises as a tenant in the year 2005 and in the year 2008 a lease deed was entered into between the respondent and the applicant herein. The lease was initially for a period of 11 months and the purpose of the lease was for both residential as well as office purpose. The rent was fixed at a sum of Rs.50,000/- per month. The respondent had also paid a rental advance of Rs.5,00,000/-.

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Thereafter, another sum of Rs.5,00,000/- was paid as rental advance which was refundable at the time of the respondent handing over vacant possession of the premises to the applicant.

4. The applicant and the respondent were enjoying cordial relationship throughout. Thereafter, the respondent in the year 2008 expressed their desire to vacate the premises. However, the applicant offered to sell the same and negotiations were held between the parties. The applicant had informed the respondent that he was a French Citizen and that he was running a Restaurant in France and was also engaged in other businesses. The respondent agreed to the said offer.

5. Thereafter on 25.07.2008 the registered agreement of sale was entered into between applicant and the respondent as per the terms of which the total sale consideration was fixed at a sum of Rs.80,00,000/- and the applicant had received an advance of Rs.40,00,000/-. The respondent who was always ready and willing to complete sale could not proceed to complete the same since the applicant informed the respondent that he

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could not immediately execute the sale deed as there was a mortgage in favour of one Sivacojoundou Paul and the applicant undertook to discharge this mortgage within a period of 5 years and therefore period of 5 years was fixed for completing the sale.

6. The reason given for the long period by the applicant was that he could not come regularly to India to discharge the mortgage. All the original title deeds relating to the property was given to the respondent and possession was also with the respondent from the year 2008. The public outgoings in respect of the property was only being remitted by the respondent.

7. The first agreement of sale was to expire on 24.07.2013. However, on 03.05.2013 the applicant had approached the respondent demanding higher sale consideration of Rs.2,00,00,000/- as against the originally agreed rate of Rs.80,00,000/-. The respondent was not agreeable to the enhanced sale consideration but however they were left with no other alternative except to accept this demand. Thereafter, mutual

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discussions were held and the terms of the agreement was reduced into writing in an agreement of sale dated 03.05.2013.

8. After revision of the sale consideration the respondent had paid the sum of Rs.18,00,000/- towards the mortgage loan on behalf of the applicant and had obtained the registered discharge receipt dated 03.05.2013 from Sivacojoundou Paul. In fact, it is after the payment of this amount that the agreement of sale was entered into between the parties. The respondent had paid a sum of Rs.1,27,77,000/- to the applicant and the same was mentioned in the agreement of sale. Thereafter, the respondent had paid a sum of Rs.12,23,000/- vide cheque on 07.05.2013 and the another sum of Rs.6,00,000/- by way of another cheque dated 01.08.2017. Therefore, in all a sum of Rs.1,46,00,000/- was paid by the respondent to the applicant. In effect the respondent had paid over 60% of the agreed sale consideration. The respondent would reiterate that he was all along ready and willing to execute the sale deed but it was the applicant who was postponing the same.

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9. On 30.04.2019, the applicant had issued a notice to the respondent containing false and vicious claims according to the respondent. The applicant had admitted receipt of a sum of only Rs.40,00,000/- but would however state that the said sum was by way of loan and not as a sale advance. The applicant in the said notice had stated that he had not intended to sell his property and that the agreement of sale which was registered was in effect only a mortgage deed. The applicant would also contend that the lease agreement was entered into on 03.05.2013 in and by which the respondent had promised to pay a sum of Rs.70,000/- however the same was not paid nor was the increased rent of 5% paid. The applicant in the notice had admitted a receipt of a further sum of Rs.79,00,000/- and Rs.6,00,000/- and had therefore admitted a total sum of Rs.1,25,00,000. He requested for return of the original document so as to alienate the property and pay the respondents.

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10. The contents of this notice was refuted by the respondent vide his reply dated 28.05.2019. In the light of the applicant going back on the

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agreement the respondent has come forward with the suit in question for specifically enforcing the agreement dated 03.05.2013 after receiving the balance sale consideration and for an injunction restraining the applicant or his men or agent or any other person acting through him from alienating, encumbering or dealing with the schedule mentioned property.

11. The applicant on receipt of the suit summons has come forward with this application for rejecting the plaint. The rejection is sought for on the following grounds:

a) The respondent does not disclose any cause of action.

b) The suit is under valued.

c) The suit is barred by limitation.

d) The respondent has come forward with false contentions in his plaint and affidavit with the ultimate aim of snatching a interim order from this Court.

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12. The applicant would contend that he has a signed blank papers sent to him by the respondent herein placing total trust on the respondent.

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He would submit that he is uneducated person who had studied only upon 8th std and that the amounts received by him was only a loan. He would further contend that the respondent had put up a permanent structure in the suit premises without his permission.

13. The applicant would submit that he has initiated Rent Control Proceedings against the respondent before the Small Causes Court in R.L.T.O.P.No.254 of 2019 and the same is pending before the Rent Controller. The applicant would further contend that the cause of action pleaded in the plaint is illusory one and does not constitute true facts. The applicant would submit that the suit is only a counter blast to the request made by the applicant asking the respondent to vacate the premises.

14. The applicant would emphatically deny that he had entered into an agreement of sale with the respondent since he never had any intention of alienating the property and further the sale consideration shown in the agreement of sale is valued less than the actual market value . The suit filed is a false suit. Though the applicant had pleaded limitation the

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affidavit filed in support of the application does not contain any averments with regard to the limitation.

15.Mr.B.Ullasavelan, learned counsel appearing for the applicant would reiterate the contentions that has been raised in the affidavit. He would prima facie base his contentions on the fact that the market value of the property is over and above a sum of Rs.2.54 Crores and therefore it is inconceivable as to how the applicant would have entered into an agreement of sale for a sum of Rs.2 Crores. He would also contend that the suit is therefore undervalued. It is also his case that the agreement had expired in the year 2018. Therefore, the limitation started running from 02.05.2018.

16. The learned counsel would argue that the sale agreement is fraudulent and fabricated one and the respondent had not come to the Court with clean hands. Therefore, he is not entitled to any interim order. He would also contend that the applicant is a man who does not know the English language and he had signed the documents without

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comprehending its contents. Therefore, he would contend that the plaint should be rejected .

17. Per contra, Mr.M.Sriram, learned counsel appearing for the respondent would contend that the agreement of sale expires only on 02.05.2018, further the applicant had repudiated the agreement of sale only in his notice dated 30.04.2019 and therefore the time for filing the suit commences from 30.04.2019. That apart, the agreement came to an end only on 02.05.2018. The present suit has been filed on 04.10.2019 which is well within the period of limitation.

18. As regards the cause of action for filing the suit, the learned counsel would submit that a reading of the entire plaint would clearly set out the causes of action which has constrained the respondent to approach the Court. He would draw the attention of the Court to paragraph no.18 of the plaint which narrates the cause of action for the suit. Cause of action is a bundle of facts which would give raise to a legal action. Therefore, he would contend that on this ground also the application for rejecting the

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plaint has to be dismissed. As regards undervaluation the learned counsel would submit that the suit has been valued as per the sale consideration fixed in the agreement and that apart undervaluation cannot be a ground for rejecting the plaint.

19. Heard the learned counsel and perused the plaint and the documents filed along with the plaint.

20. From a reading of the plaint it is seen that the respondent herein had entered into the agreement of sale at the request of the applicant originally in the year 2008. Thereafter, the said agreement was renewed again in the year 2013. On 03.05.2013 the parties have re-worked the sale consideration. The respondent has clearly set out the details of the payment of the portions of the sale consideration and its receipt by the applicant. The plaint also narrates the repudiation of the agreement of sale by the applicant and the subsequent filing of the suit by the respondent. The respondent has cogently narrated the facts and the cause of action that has arisen for filing of the suit.

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21. As regards limitation, the agreement came to an end only on 02.05.2018. It was only on 30.04.2019 that the applicant has repudiated the agreement of sale and in October 2019 the suit for specific performance has been filed. Therefore, the contentions of the applicant that the suit lacks cause of action and is barred by limitation cannot be countenanced.

22. The question of undervaluation on the basis of the pleadings would not arise since the suit has been filed as per the value fixed for the sale agreement.

23. Therefore, the applicant has not made out any case for rejecting the plaint and accordingly the application stands dismissed.

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