

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

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Date of decision: 10.01.2020

+ RFA(OS) 63/2019, C.M. APPL.29603/2019 (Stay)

M/S RAJASAVI ESTATE & DEVELOPERS & ANR Appellants

Through: Mr. Kirti Uppal, Sr. Advocate with
Mr. K.R. Chawla, Mr. Sunil Verma
and Mr. Dhruv Chawla, Advocates.

Versus

RAJESH SABHARWAL

..... Respondent

Through: Mr. Fanish. K. Jain, Mr. Neeraj
Dahiya and Mr. Deepanshu Garg,
Advocates.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ASHA MENON, J.

1. This appeal has been preferred by the appellants/defendants, being aggrieved by the judgment dated 25.04.2019, whereby the suit instituted by the respondent/plaintiff for the recovery of a sum of Rs.4,17,19,650/- with interest @ 18% per annum has been decreed against them, jointly and severally, for a sum of Rs.2,55,00,000/- alongwith interest @ 10% per annum with effect from 01.12.2015, till the date of realisation alongwith costs of Rs.1,50,000/-, on an application moved by the respondent/plaintiff, under Order XII Rule 6 CPC.

2. In brief, the facts of the case are that Sardar Jasjeet Singh and Smt. Satwant Kaur were owners of property No.29/56, West Punjabi Bagh, New Delhi, admeasuring 555.55 sq. Yds. They entered into a Collaboration

Agreement dated 28.01.2014 with the appellant No.1/defendant No.1. The agreement was for the re-development of the said property. The second floor of the re-developed/re-constructed property with proportionate share in the stilt parking and the land underneath the structure fell into the share of the appellant No.1/defendant No.1, who was also authorised under the said Collaboration Agreement to further sell the same to third parties.

3. It is on the basis of the above authorisation, the appellant No.1/defendant No.1, acting through the appellant No.2 /defendant No. 2, entered into an Agreement to Sell dated 03.12.2014 with the respondent/plaintiff for the sale/purchase of the second floor of the reconstructed property at the captioned premises for a total sale consideration of Rs.7,21,00,000/-. Admittedly, Rs.72,00,000/- towards 10% of the sale consideration was paid by the respondent/plaintiff to the appellants/defendants as down payment on the date of execution of the Agreement to Sell. The respondent/plaintiff claimed that thereafter, between 17.01.2015 and 29.11.2015, he had paid a further sum of Rs.1,88,00,000/-, to the appellants/defendants, thus totalling to a sum of Rs.2,60,00,000/-.

4. The facts as recorded in the impugned judgment reveal that on 14.01.2016, Sardar Jasjeet Singh and Smt. Satwant Kaur, cancelled the Collaboration Agreement dated 28.01.2014. Arbitration proceedings were also commenced between them and the appellants/defendants for determining the claims and counter-claims. In the meantime, the respondent/plaintiff issued a notice dated 10.02.2016, calling upon the appellant No.1/defendant No.1 as well as Sardar Jasjeet Singh and Smt. Satwant Kaur to complete the construction and deliver possession of the second floor to him on receipt of the balance sale consideration. He also

filed certain criminal complaints at Police Station Punjabi Bagh and before the DCP, West District on 01.03.2016 and 07.03.2016. The appellant No.1/defendant No.1 sent a reply-cum-notice dated 30.03.2016 to the respondent/plaintiff, claiming to have received only a sum of Rs.2,50,00,000/- and further claiming a sum of Rs.1,08,15,000/- from him.

5. Once the respondent/plaintiff learnt from the reply sent to his notice by Sardar Jasjeet Singh and Smt. Satwant Kaur, that they had cancelled the Collaboration Agreement on 14.01.2016, he demanded return of his money amounting to Rs. 2,60,00,000/- with interest and finally filed the instant suit for recovery of the principal amount with interest @ 18% per annum, amounting to Rs.1,57,19,650/- i.e., for a total sum of Rs.4,17,19,650/-.

6. Before the learned Single Judge, three applications were filed: two by the appellants/defendants and one by the respondent/plaintiff. The appellants/defendants moved an application under Order VIII Rule 1A CPC whereby they sought an opportunity to place on record, additional documents being a power of attorney executed by the appellant No.3/defendant No.3 in favour of his mother, appellant No.2/defendant No.2 dated 28/29.12.2018 and certain other documents forming a part of the arbitration proceedings. The second application was filed by the appellants/defendants under Order I Rule 10 CPC praying therein that the defendants No.2 and 3 be discharged from the case and their names deleted from the array of parties as they were Directors of the appellant No.1/defendant No.1 and could have no personal liability in the case. Vide the said application, a further prayer was made that Sardar Jasjeet Singh and Smt. Satwant Kaur be impleaded as necessary parties to the suit. A third application was filed by the respondent/plaintiff under Order XII Rule 6

CPC submitting therein that on the basis of the pleadings, the suit instituted by him, be decreed in his favour.

7. In the impugned judgment, the learned Single Judge observed that for the reasons given, Sardar Jasjeet Singh and Smt. Satwant Kaur were not necessary parties to the proceedings and rejected the contention of the appellants/defendants that they were beneficiaries under Section 70 of the Indian Contract Act, 1872 since the property in question owned by them was re-constructed and re-developed with the money paid by the respondent/plaintiff to the appellants/defendants. The learned Single Judge held that the corporate veil had to be lifted since in the transaction between the appellants/defendants and the respondent/ plaintiff, the former were not the power of attorney holders of Sardar Jasjeet Singh and Smt. Satwant Kaur and as payments were received by them in their personal capacity including in cash, the appellants/defendants No. 2 and 3 were necessary parties whereas Sardar Jasjeet Singh and Smt. Satwant Kaur were neither necessary nor proper parties to the suit.

8. The learned Single Judge also rejected the contention of the appellants/defendants that the respondent/plaintiff could only seek specific performance of the Agreement to Sell by observing that once the Arbitrator had declined the relief of specific performance of the Collaboration Agreement dated 28.01.2014 to the appellants/defendants, they were disabled from completing their part of the obligations under the said Agreement to Sell and therefore, specific performance of the same could not be sought by the respondent/plaintiff. The learned Single Judge concluded that there was no issue that required a trial in the suit, particularly in the light of the statement of the respondent/plaintiff made through counsel that

since the appellants/defendants had claimed that only a sum of Rs.2,55,00,000/- had been paid to them and not a sum of Rs.2,60,00,000/- as was claimed by him, he was giving up the claim for the disputed sum of Rs.5 lakhs. Thus, as noticed above, the suit was decreed for a sum of Rs.2,55,00,000/-, with interest @10% per annum with effect from 01.12.2015, till the date of realisation alongwith costs of Rs.1,50,000/-.

9. Aggrieved by the impugned judgment, the appellants/defendants have preferred the present appeal contending *inter alia* that the learned Single Judge has erred in not disposing of the applications moved by them under Order I Rule 10 CPC and Order VIII Rule 1A CPC, before decreeing the suit under Order XII Rule 6 CPC. Mr. Kirti Uppal, learned Senior Advocate argued that Section 70 of the Indian Contract Act, 1872 was fully applicable to the facts of the present case inasmuch as the property in question belonged to Sardar Jasjeet Singh and Smt. Satwant Kaur and the appellants/defendants had paid the consideration received by them from the respondent/plaintiff, which both of them had utilised for the re-construction of their property and which they had subsequently sold to a third party namely, M/s. Manikaran International Private Limited. Thus they had profited from the transaction with the respondent/plaintiff. Learned Senior Advocate also submitted that since the learned Arbitrator had concluded that cancellation of the Collaboration Agreement by Sardar Jasjeet Singh and Smt. Satwant Kaur was unjustified and he had awarded compensation to the appellants/defendants, therefore, both of them were necessary parties to the suit and it would have been a matter of trial as to the extent to which they could be held liable. However, it was inappropriate for the learned Single Judge to have straightaway decreed the suit under Order XII Rule 6 CPC. A

plea was also taken that the suit was barred by limitation and the conclusion of the learned Single Judge to the contrary, was erroneous. Finally, it was submitted that the learned Single Judge had wrongly saddled the appellants/defendants No.2 and 3 with the liability as the appellant No. 1/company was a separate entity from the Directors who could not be held personally liable for the obligations cast on the company.

10. On the other hand, Mr. Fanish K. Jain, learned counsel for the respondent/plaintiff pointed out that the respondent/plaintiff had no dealings directly with the owners of the subject property namely, Sardar Jasjeet Singh and Smt. Satwant Kaur and their dealings were only through the appellant/defendants. He pointed out that the Sale Deed was not to be executed by Sardar Jasjeet Singh and Smt. Satwant Kaur, as was being claimed by the appellants/defendants, but by the appellants /defendants themselves on receipt of the balance sale consideration, part whereof was admittedly paid in cash and naturally, received by the appellants No.2 & 3/defendant No.2 and 3 as appellant No.1/company was a juristic entity. It was submitted that since there was no triable issue raised, the learned Single Judge had rightly decreed the suit in favour of the respondent/plaintiff. Learned counsel placed reliance on the judgment of the Supreme Court in Mahanagar Telephone Nigam Limited vs. Tata communications Ltd., **2019 AIR (SC) 1233** in support of his contention that Section 70 of the Indian Contract Act was not attracted to the facts of the present case, as there existed a contract between the respondent/plaintiff and the appellants/defendants for their own mutual benefit and the terms of the said contract had been clearly spelt out and agreed upon. He also asserted that the suit was within limitation for the reason that construction on the premises

was to be completed by 19.05.2016 (i.e. after 20 months from the date of receiving the sanctioned building plans from the SDMC) and the Collaboration Agreement had been cancelled on 14.01.2016, whereas the suit was filed on 20.08.2018.

11. We have heard the learned counsel for the parties and considered the cited judgments and the materials on record. The learned Single Judge has disposed of the application moved by the appellants/defendants under Order I Rule 10 CPC by lifting the corporate veil and holding that Section 70 of the Indian Contract Act, 1872 was not attracted to the facts of the case. Resultantly, the application for deletion of the appellant No.2 and 3/defendant No.2 and 3 and impleadment of Sardar Jasjeet Singh and Smt. Satwant Kaur in the suit was rejected. The learned Single Judge also made a reference to the arbitration proceedings in the impugned judgment. Therefore, the submission made on behalf of the appellants/defendants that the learned Single Judge has proceeded to dispose of the suit without disposing off the applications moved by them under Order I Rule 10 CPC and under Order VIII Rule 1A CPC, is found to be incorrect.

12. The question of limitation has also been rightly decided by the learned Single Judge in favour of the respondent/plaintiff as the suit instituted by him was not a suit for money simplicitor, but was in relation to consideration paid towards a sale transaction. In such circumstances, Article 113 of the Schedule appended to the Limitation Act that states that “*for any suit for which no period of limitation is provided elsewhere in the Schedule, the period of limitation shall be three years from when the right to sue accrues*”, would be attracted to the facts of this case. The learned Single Judge has also rightly held that all the facts have been admitted and there

was no need for a trial to be conducted.

13. Before proceeding to deal with the plea taken by the appellants/defendants that Section 70 of the Indian Contract Act would apply to the facts of the case, we need to examine the said provision which reads as under:-

“70. Obligation of person enjoying benefit of non gratuitous act.—Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.”

14. Section 70 of the Indian Contract Act, 1872, falls under Chapter V that is headed *“Of Certain Relations Resembling Those Created by Contract”*. On a plain reading thereof, it is clear that the said Chapter does not apply to contracts at all, but to relations/transactions that seem to have some obligation to monetarily recompense a person who has done some act which gives a benefit to another, with whom there is no contractual relationship. Section 70 of the Indian Contract Act, 1872 is attracted on satisfaction of certain conditions. The first condition is that a person should lawfully do something for another person or deliver something to him; the second condition is that doing the said thing or delivering the said thing, he must not intend to act gratuitously and the third condition is that the other person for whom something is done or to whom something is delivered, must enjoy the benefit thereof.

15. In the facts of the present case, none of the aforesaid conditions are satisfied as it was the appellants/defendants, who had purchased the second

floor from the owners, for their own benefit and they had in turn, sold it to the respondent/plaintiff, for consideration. That consideration was not received by the appellants/defendants on behalf of any other person, much less the owners. In Kanhayalal Bisandayal Bhiwapurkar (Dr.) v. Indarchandji Hamirmalji Sisodia, AIR 1947 Nag 84, it was observed that Section 70 of the Indian Contract Act, 1872 cannot be availed of by a person who relies on an express contract. In the present case, admittedly, a contract did exist between the respondent/plaintiff and the appellants/defendants and a separate contract existed between the appellants/defendants and the owners, Sardar Jasjeet Singh and Smt. Satwant Kaur.

16. In Mahanagar Telephone Nigam Limited (supra), the Supreme Court quoted with approval its earlier decision in Mulamchand v. State of M.P., (1968) 3 SCR 214 while deciding a claim made under Section 70 of the Indian Contract Act, 1872 and held thus:-

“6.....The important point to notice is that in a case falling under Section 70 the person doing something for another or delivering something to another cannot sue for the specific performance of the contract, nor ask for damages for the breach of the contract, for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. So where a claim for compensation is made by one person against another under Section 70, it is not on the basis of any subsisting contract between the parties but on a different kind of obligation. The juristic basis of the obligation in such a case is not founded upon any contract or tort but upon a third category of law, namely, quasi-contract or restitution.....”

(emphasis added)

17. As already observed above, the appellants/defendants did not enter into an Agreement to Sell with the respondent/plaintiff for the benefit of Sardar Jasjeet Singh and Smt. Satwant Kaur. The said transaction was based on the previous transaction of the appellants/defendants with Sardar Jasjeet Singh and Smt. Satwant Kaur whereby the former were vested with the right to sell to third parties, the second floor of the re-developed/re-constructed property, for their own profit. The appellants/defendants had admittedly paid some money to the owners of the property as consideration for this right, including undertaking the obligation to re-construct and re-develop the said property. It is for that reason that the learned Arbitrator was appointed in the disputes that had arisen between Sardar Jasjeet Singh and Smt. Satwant Kaur on the one side and the appellants/defendants on the other in which proceedings, it was not found necessary to determine any right or obligation of the respondent/plaintiff vis-a-vis the appellants/defendants or even the owners. Merely because, the appellants/defendants had utilised the payment received from the respondent/plaintiff for re-constructing the property, cannot be a ground to hold that they had entered into a contract with the respondent/plaintiff for the benefit of Sardar Jasjeet Singh and Smt. Satwant Kaur so as to make them liable to make payment of the amount claimed by the respondent/plaintiff in the suit instituted by him. The respondent/plaintiff had not even entered into any contract with the appellants/defendants to finance the construction on behalf of the owners of the land and property. In the above facts and circumstances, the learned Single Judge was fully justified in rejecting the application of the appellants/defendants moved under Order I Rule 10 CPC for seeking impleadment of Sardar Jasjeet Singh and Smt. Satwant Kaur in the suit.

18. The argument of the learned Senior Advocate appearing for the appellants/defendants that the appellants/defendants could not be sued twice and be asked to pay twice as the learned Arbitrator had also directed them to pay Sardar Jasjeet Singh and Smt. Satwant Kaur, is neither here nor there as the learned Arbitrator was called upon to adjudicate the disputes between the appellants/defendants and the owners of the property and decide upon the obligation of the appellants/defendants to pay money to the owners of the property on account of having taken some loan from them, which loan was set off against the claim made by the appellants/defendants on the owners, for return of money invested by them in the re-construction and re-development of the property. The plea that the said set-off can be transferred on to the respondent/plaintiff, is untenable and liable to be rejected outright.

19. We also do not find any merit in the contention of the learned Senior Advocate for the appellants/defendants that no liability could be attached to the appellants/defendants No.2 and 3. The learned Single Judge has rightly observed as under:-

*“37. Considering that a large part of the amount has been paid and received in cash by the defendants no.2&3, I am of the view that a case for piercing the corporate veil is made out. The cloak of a company cannot be permitted to be used to illegally withhold monies. Reference in this regard can be made to **Subhra Mukherjee Vs. Bharat Coking Coal Ltd. (2000) 3 SCC 312, Singer India Ltd. Vs. Chandar Mohan Chadha (2004) 7 SCC 1, Saurabh Exports Vs. Blaze Finlease & Credits Pvt. Ltd. (2006) 129 DLT 429 and Dara Projects Pvt. Ltd. Vs. Business India Exhibitions Pvt. Ltd. (2017) SCC OnLine Del 8069.**”*

20. For the aforesaid reasons, it is clear that there were no triable issues raised in the suit. We do not find any error in the impugned judgment that calls for interference in appeal. The appeal being devoid of any merit, is accordingly dismissed along with the pending application with no orders as to costs.

(ASHA MENON)
JUDGE

(HIMA KOHLI)
JUDGE

JANUARY 10, 2020
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