

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

% **Date of decision: 17th January, 2020.**

+ **CS(OS) 623/2019 & IA No.16791/2019 (u/O XXXIX R-1&2 CPC)**

RAJINDER PRASAD AGGARWAL Plaintiff

Through: Mr. Vijay K. Singh, Adv.

Versus

DR. ANIL KUMAR NARANG Defendant

Through: Mr. Nikhil Kapoor, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The sole plaintiff has instituted this suit on 22nd November, 2019 against the sole defendant, for specific performance of an Agreement of Sale, dated 12th April, 2019 of property No.-79, Amritpuri-A, revenue estate of Village Garhi Jharia Maria, New Delhi, by the defendant to the plaintiff.
2. As per the Agreement to Sell, the total sale consideration was Rs.2,84,00,000/-, out of which Rs.30,00,000/- was paid by the plaintiff to the defendant at the time of Agreement to Sell as advance/earnest money and the balance sale consideration of Rs.2,54,00,000/- was to be paid by the plaintiff to the defendant on 31st August, 2019.
3. The suit came up first before this Court on 29th November, 2019, when *inter alia* the following order was passed:

“4. As per the averments in the plaint, the sale was to be completed by 31st August, 2019. Though the plaintiff claims readiness and willingness but has neither sent any letter to the defendant before 31st August, 2019 or immediately thereafter, calling upon the defendant to perform his part of the agreement or expressing the plaintiff's

readiness and willingness, nor purchased stamp papers nor has filed anything to show that the plaintiff on or before 31st August, 2019 was possessed of the balance sale consideration. There is nothing to show that the plaintiff even today has balance sale consideration for payment to the defendant, if the defendant, on being issued notice, expresses willingness.

5. On being asked, whether the plaintiff is willing to compensate the defendant for the delay in making payment, the counsel for the plaintiff states that he will have to seek instructions.

6. Making the plaintiff liable for exemplary costs, if it turns out otherwise, issue summons of the suit and notice of the application for interim relief to the defendant by all modes including dasti returnable on 9th January, 2020.

7. Till further orders, the defendant is restrained from alienating, encumbering or parting with possession of property No.79, Amritpuri-A, Village Garhi Jharia Maria, New Delhi.”

4. On appearance of the defendant on 9th January, 2020, *inter alia* the following order was passed:

“3. The defendant is reported to have been served on 11th December, 2019 and the counsel for the defendant appears and states that written statement shall be filed by tomorrow i.e. 10th January, 2020.

4. I have enquired from the counsel for the defendant, whether the defendant, subject to the plaintiff compensating the defendant for delay, is willing to still execute the sale deed in favour of the plaintiff.

5. The counsel for the defendant, under instructions from the defendant present in Court, states that the defendant is so willing subject to the plaintiff this time around, completing the transaction in a time bound manner.

6. The counsel for the plaintiff, on enquiry states that the plaintiff is willing to compensate the defendant for delay, as may be deemed fit by the Court.

7. The counsel for the defendant states that out of the advance of Rs.30,00,000/- received, Rs.10,00,000/- was received by bank transfer from the broker Judge Chawla and the defendant on 24th September, 2019 has refunded the said amount to Judge Chawla by bank transfer in the name of his wife Shonika Chawla.

8. The counsel for the plaintiff states that he is not aware and the plaintiff is not present in the Court.

9. Thus, while according to the plaintiff balance sale consideration is Rs.2,54,00,000/-, according to the defendant it is Rs.2,64,00,000/-.

10. Transaction was to be completed by 31st August, 2019.

11. The plaintiff to compensate the defendant for the delay, by paying to the defendant, besides the remaining sale consideration, a sum of Rs.10,00,000/-. The said amount has been computed by approximately computing interest for the period of delay at 10% per annum.

12. The plaintiff to deposit Rs.2,74,00,000/- in this Court on or before 13th January, 2020, subject to further orders with respect to Rs.10,00,000/- therefrom.

13. The counsel for the plaintiff states that the plaintiff would be not able to.

14. The aforesaid falsifies the pleas in the plaint of readiness and willingness and disentitles the plaintiff to the relief of specific performance.

15. However to test the bona fides of the plaintiff, the amount is permitted to be deposited by 16th January, 2020.

16. List on 17th January, 2020 for further consideration.”

5. Today, a different counsel appears for the plaintiff and states that though the plaintiff is ready and willing but the defendant is not the sole owner of the property and is unable to convey title in favour of the plaintiff. It is stated that others, besides the defendant, are also owners of the property.

6. On enquiry from the counsel for the plaintiff that if that was so, whether there was an agreement with others and whether the plaintiff has impleaded the others or whether any such plea has been taken in the plaint, the counsel for the plaintiff has fairly stated that no such plea has been taken in the plaint.

7. It is thus quite obvious that according to the statement of the counsel for the plaintiff today, the contract is not specifically enforceable and/or the defendant is not in a position to convey title in the property to the plaintiff. The counsel for the plaintiff however states that he is still willing to purchase the property.

8. If the plaintiff had any such will, he would have in compliance of the order dated 9th January, 2020, which was only of deposit of the balance sale consideration in this Court and not of payment thereof to the defendant, deposited the said sale consideration, to show his *bona fides* and readiness and willingness and then sought appropriate orders from this Court. The conduct of the plaintiff, on 9th January, 2020 and today rather shows the plaintiff to be not acting *bona fide* and that the plaintiff has not been ready and willing and is not ready and willing to perform his part of the agreement. The plaintiff, even if had not deposited the sale consideration in this Court, as observed above, could have brought before this Court

documentary proof of holding the balance sale consideration for payment and which has also not been done.

9. The only conclusion is that the plaintiff, qua whose readiness and willingness doubts were expressed in the orders dated 29th November, 2019 and 9th January, 2020, has been unable to demonstrate his *bona fides* in instituting this suit and to prove his readiness and willingness.

10. Section 16 of the Specific Relief Act, 1963 as amended with effect from 2018 provides that specific performance of a contract cannot be enforced in favour of a person who fails to prove that he has performed or has always been ready and willing to perform the essential term of the contract which was to be performed by him. Even though the words “who fails to aver....” have been deleted from Section 16 vide the amendment of the year 2018 but I have in judgment dated 20th December, 2019 in CS(COMM) No.634/2019 titled ***Jasbir Singh Vs. Phoenix Arc Pvt. Ltd.***, held that since evidence can be led only on what is pleaded (as held in ***Transformative Learning Solutions Pvt. Ltd. Vs. Pawajot Kaur Baweja*** 2019 SCC OnLine Del 9229 and ***India Yamaha Motor Pvt. Ltd. Vs. Seema Bhatia*** 2019 SCC OnLine Del 9554) and cannot be led on what is not pleaded, a plaintiff in a suit for specific performance, must plead facts to show performance by him of his part of the agreement and his readiness and willingness to perform the essential terms of the agreement, even if not expressly so, as was the law prior to the amendment.

11. In the present case, on the pleadings, no case of readiness and willingness was found on 29th November, 2019 when the suit had come up

first and the subsequent happenings as recorded above, have only confirmed the doubts of this Court.

12. The process of the Court is not to be applied mechanically and once from what is played out in the open Court, it is evident that the plaintiff is not ready and willing, the suit cannot be mechanically and pedantically proceeded with.

13. It is quite obvious that the plaintiff, by instituting this suit was abusing the process of the Court, by on the one hand entangling the property of the defendant, preventing sale thereof by the defendant to any other person and on the other hand himself not in a position to purchase the same. Such abuse of process of the Court cannot be permitted.

14. The suit, insofar as for the relief of specific performance, thus fails.

15. The plaintiff, besides the relief of specific performance, has only claimed the relief of restraining the defendant from dealing with third parties and in the alternative of “pass a compensation order in terms of Section 22 of the Specific Relief Act, 1963”.

16. The plaintiff having been found to be himself not ready and willing to perform his part of the contract of sale, is found to be in breach thereof and not entitled to any compensation.

17. The suit is thus dismissed with liberty to the plaintiff to take appropriate legal proceeding for recovering the amounts claimed by him to have been paid to the defendant, if entitled thereto in law.

18. Though summons of the suit were issued cautioning the plaintiff that he will be liable for exemplary costs but in view of the aforesaid, I refrain from imposing any costs on the plaintiff.

19. The suit is dismissed with no order as to costs.

20. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JANUARY 17, 2020
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