

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

% **Date of decision: 22nd January, 2020.**

+ **CS(OS) 229/2016 & IA No.4931/2019 (of D-1 u/O XII R-6 CPC) & CC No.52/2017**

AMIT KUMAR TYAGI **Plaintiff**

Through: Mr. M.S. Rahman, Adv.

Versus

GOEL FLEXIBLE PACKAGING PVT LTD & ORS...Defendants

Through: Mr. Abhishek Paruthi and Mr. Sachin Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff instituted this suit under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) against defendants No.1 to 5, namely (i) Goel Flexible Packaging Pvt. Ltd., (ii) Umesh Goel, (iii) Brijesh Goel, (iv) Sudesh Goel and (v) Shri Krishnan Goel, for recovery of Rs.8 crores with interest, pleading (a) that the defendants purchased plot measuring 4190 sq. mtrs. having Khasra No.962, situated at Village-Noor Nagar, Loni, Ghaziabad, U.P. for a sum of Rs.13,15,00,000/- and a Sale Deed was executed between the plaintiff and the defendant No.2 to this effect on 4th September, 2013; (b) that for payment of sale consideration, the defendants issued post-dated cheques/demand drafts to the plaintiff; (c) that four cheques, all dated 7th July, 2014 of Rs.2 crores each when presented, were returned unpaid owing to insufficiency of funds in the account on which the same were issued; and, (d) that the defendants had failed to pay the said amount inspite of repeated requests.

2. The suit came up first before this Court on 11th May, 2016 and thereafter on 2nd June, 2016, 25th July, 2016 and finally vide order dated 5th August, 2016 summons for appearance were ordered to be issued.
3. Vide order dated 14th December, 2017, leave to defend was granted to the defendants.
4. The defendants, besides filing the written statement, have also filed a Counter-Claim for recovery of Rs.2 crores paid to the plaintiff as part sale consideration and the pleadings in the suit and the Counter-Claim have been completed.
5. The defendants filed IA No.4931/2019 under Order XII Rule 6 of the CPC on which also the pleadings were completed.
6. The aforesaid application being IA No.4931/2019 was listed yesterday for hearing. Mr. M.S. Rahman, Advocate for the plaintiff appeared on first call; passover at that time was sought on behalf of the defendants.
7. Finding that it was the plea of the defendants in IA No.4931/2019 under Order XII Rule 6 of the CPC that, (i) it was expressly mentioned in the Sale Deed, that if the post-dated cheques for balance sale consideration were not honoured on presentation, the Sale Deed shall be treated as cancelled; (ii) the plaintiff has concealed the factum of having filed Civil Suit No.770/2016 in the Court of Civil Judge, Ghaziabad, for the relief of declaration that the sale deed being without payment of consideration was null and void and of no effect, it was yesterday enquired from the counsel for the plaintiff, that once it was so, what was the entitlement of the plaintiff to the relief of recovery of Rs.8 crores sought.

8. The counsel for the plaintiff, yesterday stated that Ghaziabad suit was only for the relief of injunction and not for the relief of declaration as null and void of the Sale Deed.

9. However the defendants, along with the application under Order XII Rule 6 of the CPC have filed a copy of the plaint in the Ghaziabad suit in Hindi language and a reading whereof showed the relief claimed therein to be of declaration as null and void of the Sale Deed.

10. However yesterday the counsel for the plaintiff kept on denying that the suit was for the relief of declaration. Owing to the counsel for the defendants being not available on first call, the matter was passed over.

11. On passover, the counsel for the defendants appeared but the counsel for the plaintiff did not appear inspite of the Court waiting for him for a considerable time and as recorded in yesterday's order. It was enquired from the counsel for the defendants yesterday, whether the defendants were willing to disclaim all rights in the land and to deliver possession thereof back to the plaintiff.

12. The counsel for the defendants stated that the defendants were so willing.

13. However adverse orders against the plaintiff were deferred yesterday and the matter posted for today.

14. Today, Mr. M.S. Rahman, Advocate has again appeared for the plaintiff and states that he did not know about the Ghaziabad suit and has learnt of it only from the application under Order XII Rule 6 of CPC filed by

the defendants and has called the plaintiff to the Court and identifies one person present in the Court as plaintiff.

15. The plaintiff present in Court, on enquiry in vernacular states that on delivery of possession, he is willing to refund Rs.2 crores to the defendants.

16. I have perused the english translation of the Sale Deed in Hindi language, filed by the plaintiff himself. The same *inter alia* provides as under:

“The actual, complete and ownership possession has been handed over to the Vendee on the land under sale. If the cheque of the above amount will cancel/reject, then the Sale Letter will be considered automatically cancelled/rejected. Now it is up to the Vendee to use the land as per his wishes, Sell the same, make deal to Sell the same, pass the map of land, make construction, receive loan from any bank, the Vendor will gladly put his signature where the requirement of signature and consent is needed, he will not have any objection.”

17. Section 55(4)(b) of the Transfer of Property Act, 1882 provides, that in the absence of a contract to the contrary, the seller is entitled, where ownership of the property has passed to the buyer before payment of whole of purchase money, to a charge upon the property in the hands of the buyer, from the date the possession is delivered. The same indicates that, merely because a registered sale deed is executed, does not mean that the ownership of the property has passed from the seller to the buyer and the parties, in the sale deed, may provide otherwise and in which case the agreement between the parties will prevail. Here, the parties are found to have provided otherwise. Here, the parties have made the sale contingent on the

encashment of the cheque for sale consideration. Chapter III of the Contract Act, 1872 also provides for contracts to be contingent. Thus, the ownership of the property was to pass from the plaintiff as seller to the defendants as buyer, not merely by registering of sale deed, but by encashment of cheque given by defendants to plaintiff for sale consideration and which contingency, admittedly has not occurred. The plaintiff, on such contingency, had option to either sue for specific performance of agreement to sell evidenced by sale deed or for recovery of damages if any suffered by breach on part of defendants. The plaintiff, by instituting the suit at Ghaziabad, for declaration as null and void, of the sale deed, has opted to treat the sale deed as non-existent and cannot at the same time maintain this suit, in exercise of rights under Section 55(4)(b) supra, treating the sale deed as existent and having conveyed/transferred ownership of the property to the defendants. Supreme Court in ***Khela Banerjee Vs. City Montessori School*** (2012) 7 SCC 261, though concerned with a lease agreement (and not a sale deed) executed upon condition that in case of failure to deposit instalments within prescribed time limit, the deed of agreement would become void, held that the agreement would become void and transferor/ lessor shall be free to sell plot to any third party since non-payment rendered the agreement automatically void. Recently in ***S. Sarojini Amma Vs. Velayudhan Pillai Sreekumar*** (2019) 11 SCC 391 also, in the context of a conditional gift it was held that a conditional gift only becomes complete on compliance of conditions in the deed and when a gift is incomplete, the title remains with the donor and the gift deed might be cancelled. Reference may also be made to ***Kaliaperumal Vs. Rajagopal*** (2009) 4 SCC 193 and ***Surinder Pal Vs. Rainbow Promoters Pvt. Ltd.*** 2010 SCC OnLine P&H 9366.

18. I have enquired from the counsel for the defendants, whether the defendants have dealt with the property in any manner whatsoever to the detriment of the plaintiff and/or have mortgaged the same or created any third party rights in the same.

19. The counsel for the defendants states that the defendants have not done any such thing.

20. The defendants are bound by the aforesaid statement and which, if found to be erroneous, shall make the defendants liable for contempt of the Court.

21. The counsel for the defendants also states that the defendants will agree to the declaration as null and void of the Sale Deed before the Ghaziabad Court or before any other forum and shall, in furtherance thereto, do all other things, as the defendants may be required to do and if the property has been mutated from the name of the plaintiff to the name of the defendants, shall also have the mutation reversed.

22. Resultantly, the suit filed by the plaintiff, being CS(OS) No.229/2016, for recovery of Rs.8 crores from the defendants, is found to be misconceived and is dismissed.

23. Decree sheet be prepared.

24. The counsel for the defendants further states that the original Sale Deed shall be handed over by the defendants to the plaintiff.

25. The Counter-Claim of the defendants is entitled to succeed for recovery of Rs.2 crores from the plaintiff. Though the plaintiff could have claimed compensation for breach of contract from the defendants, but has

not done so. However, the claim of the defendants for interest is not found to be justified in law, inasmuch as, it is the defendants who have reneged from the transaction and have also been in possession of the property till now. Thus, the defendants are found entitled to interest on Rs.2 crores only for future, after 60 days from the decree.

26. A decree is accordingly passed, in favour of the defendant No.1, who alone is the purchaser under the Sale Deed, and against the plaintiff, for recovery of Rs.2 crores with interest @ 10% per annum after 60 days of this order, till payment/recovery.

27. The parties are left to bear their own costs.

28. Decree sheet be drawn up.

JANUARY 22, 2020

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(corrected and released on 10th February, 2020)

RAJIV SAHAI ENDLAW, J.