

\$~

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

3, 4 &5

+ **FAO (OS) 219 /2016 and CM APPL.51834/2019**

DHARAMPAL SATYAPAL LIMITED Appellant

Through: Mr Deepak Dhingra and Ms Isanda
Soloman, Advocates.

versus

SANMATI TRADING AND INVESTMENT LTD. & ANR..... Respondents

Through: Mr Yakesh Anand and Mr Nimit
Mathur, Advocates for R-1.

+ **FAO (OS) 373 /2016**

DHARAMPAL SATYAPAL LIMITED Appellant

Through: Mr Deepak Dhingra and Ms Isanda
Soloman, Advocates.

versus

SANMATI TRADING AND INVESTMENT LTD. & ANR..... Respondents

Through: Mr Yakesh/ Anand and Mr Nimit
Mathur, Advocates for R-1.

+ **FAO (OS) 131 /2017**

DHARAMPAL SATYAPAL LIMITED Appellant

Through: Mr Deepak Dhingra and Ms Isanda
Soloman, Advocates.

versus

SANMATI TRADING AND INVESTMENT LTD. & ANR..... Respondents

Through: Mr Yakesh Anand and Mr Nimit
Mathur, Advocates for R-1.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

%

ORDER
16.01.2020

Dr. S. Muralidhar, J.:

1. These are three appeals by the Appellant Dharampal Satyapal Limited, the Plaintiff in CS(OS) No.320/2006, against the Respondents/Defendants Sanmati Trading And Investment Ltd (Defendant No.1) and Veejay Buildwell Pvt. Ltd. (Defendant No.4). The Director of Defendant No.1, Mr. V. Sundaram was Defendant No.2 and his wife was impleaded as Defendant No.3 in the said suit.

2. While FAO(OS) No.219/2016 is directed against an order dated 2nd May, 2016 of the learned Single Judge passed in IA No.3276/2011 filed by the Plaintiff under Order VI Rule 17 of the Civil Procedure Code ('CPC'), FAO(OS) No.373/2016 is directed against an order dated 5th October, 2016, whereby the Plaintiff was debarred from carrying out the amendment that was allowed by the order dated 2nd May 2016.

3. The third appeal being FAO(OS) No.131/2017, is directed against an order dated 23rd February, 2017 passed by the learned Single Judge, deciding the preliminary issue (i) against the Plaintiff, and holding that the Plaintiff is not entitled to the relief of specific performance for the reasons of not having claimed the relief of declaration of the termination, admittedly effected by the Defendant No.1 by letters dated 1st March and 22nd March, 2005, of the Agreement to Sell as void.

4. The Court would first like to deal with the third appeal being FAO(OS)

No.131/2017, since the issue involved therein goes to the root of the suit filed by the Plaintiff.

5.The suit filed by the Plaintiff sought specific performance of an Agreement to Sell dated 17th June, 2004, in terms of which, according to the Plaintiff, the Defendant No.1 agreed to sell the property bearing number 3, Friends Colony (West), New Delhi (hereafter, ‘the property in question’) to the Plaintiff. According to the Plaintiff, pursuant to the agreement between the Plaintiff and the Defendant No.1 that the property in question would be sold to the Plaintiff for a sum of Rs.16.29 crores, the Plaintiff paid to the Defendant No.1 a sum of Rs.11 lacs.

6. According to the Plaintiff, instead of completing the sale, the Defendant No.2, on 1st March, 2005, wrote a letter resiling from the agreement and returning to the Plaintiff the sum of Rs.11 lacs by way of a cheque dated 1st March, 2005. Defendant No.2 stated that “the agreement signed by the parties and kept in a sealed cover, be cancelled and returned to Defendant No.1”.

7. The Plaintiff states that it replied on 14th March, 2005, registering its protest, asserting that it had always been and still was ready and willing to pay the balance sale consideration and that it was willing to execute the necessary documents so that the sale transaction could be completed without further delay “at one go”. The Plaintiff claimed that it had also returned the cheque dated 1st March, 2005, for the sum of Rs.11 lacs to the Defendant No.1.

8. On 22nd March, 2005, the Defendant No.1, under the signatures of the Defendant No.2, claimed that the returned cheque was not found enclosed with the Plaintiff's letter dated 14th March, 2005. The Defendant No.1 also reiterated that "the deal stands cancelled" on account of the Plaintiff's "failure to pay the total sale consideration". The Plaintiff reiterated its stand by a further letter dated 28th March, 2005 and thereafter filed CS(OS) No.320/2006 on 30th December, 2005.

9. It transpired that by a registered sale deed dated 10th June, 2005, the Defendant No.1 sold the property in question to the Defendant No.4 (i.e. Respondent No.2 in the appeal). This led to the Plaintiff filing IA No.6351/2008 in May, 2008, seeking to implead Defendant No.4 as a party Defendant. The said application was allowed on 18th March, 2014.

10. In the meanwhile, the Plaintiff filed IA No. 3276/2011, seeking to add the relief of declaration i.e. declaring the transaction of sale by the Defendant No.1 in favour of Defendant No.4 Veejay Buildwell Pvt. Ltd. by the registered sale deed dated 10th June, 2005 to be bad in law. The Plaintiff also sought the relief of cancellation of the said sale deed, the relief of possession against all the Defendants, and the relief of damages of Rs.10 crores as an alternative relief to specific performance.

11. By the first impugned order dated 2nd May, 2016, the learned Single Judge held as follows:

"Having heard learned counsels, I find merit in the submission of learned counsel for defendant no. 1 that since the plaintiff did not seek any compensation against defendant no.1 in the plaint as originally filed, the relief, in the alternative, to claim

damages @ Rs.10 crores against the said defendant by way of amendment is barred by limitation, so far as defendant no. 1 is concerned. However, on the aspect whether the amended reliefs sought to be incorporated, which are directed against defendant no. 2, are within the period of limitation or not, the said aspect is left open.

It shall be open to the defendants to raise the said defence of limitation in their amended written statement, and if so raised, the court shall frame an issue and consider the same on its merits after trial. The application is accordingly allowed in the aforesaid terms.”

12. The learned Single Judge further directed as under:

“Though the amended plaint is on record, in view of the aforesaid observations, it is necessary for the plaintiff to file a proper amended plaint. Accordingly, the amended plaint filed along with the application shall not be taken on record. The plaintiff may file the amended plaint within two weeks with advance copy to counsel for defendant nos. 1 and 2, who may file their respective written statements within four weeks thereafter.”

13. When the suit was listed next before the learned Single Judge on 5th October, 2016, the counsel for the Plaintiff was unable to confirm whether the copy of the amended plaint had already been filed. When a copy thereof was handed over in Court, the learned Single Judge noted that it was not in accordance with the order dated 2nd May, 2016, since the Plaintiff had “included amendments which were sought in the application filed for amendment, but which were disallowed vide order dated 2nd May, 2016”. Consequently, the Plaintiff was, by the said second impugned order dated 5th October, 2016, debarred under Order VI Rule 18 CPC from carrying out the amendment permitted on 2nd May, 2016 also.

14. By the same order dated 5th October, 2016, the learned Single Judge framed eight issues, out of which issue no.(i), which was ordered to be treated as the preliminary issue, reads as under:

“(i) Whether the plaintiff is not entitled to the relief of specific performance for the reason of having not claimed the relief of declaration of the termination admittedly effected by the defendant no. 1 vide letters dated 1st March, 2005 and 22nd March, 2005 of the Agreement to Sell, as void? OPPr”

15. The learned Single Judge further directed that the arguments on the preliminary issue (i) would be taken up for consideration on 19th December, 2016.

16. By the third impugned order dated 23rd February, 2017, the said preliminary issue was decided against the Plaintiff.

17. This Court has heard the submissions of Mr Deepak Dhingra, learned counsel appearing for the Plaintiff/Appellant and Mr Yakesh Anand, learned counsel appearing for the Defendant No.1/ Respondent No.1.

18. The prayers of the suit, as set out in the plaint, read as under:

“1. A decree for specific performance of the Agreement to Sell in respect of property commonly known as 3 Friends Colony (West), New Delhi, measuring 3,520.93 sq. mtrs. (4,211 sq. yds.), as detailed above, be passed in favour of the plaintiff and against the' defendants and the defendants be directed to specifically perform the agreement i.e. accept the balance price (Rs.16.18 Crores) and transfer the said land and built-up property by means of a sufficient instrument along with vacant physical possession to the plaintiff.

2. In case the defendants fail to do the needful, an officer of the Court may be appointed to receive the balance money on their behalf - or these be allowed to be deposited in Court - and execute and register the necessary documents and to deliver the actual, vacant, physical possession of the property in suit to the plaintiff for which warrants may kindly be issued. "

19. The submissions of the Defendant No.1, which have been accepted by the learned Single Judge in the impugned order dated 23rd February, 2017, is that in view of the law explained by the Supreme Court in ***I. S. Sikandar (Dead) by L.Rs v K. Subramani (2013) 15 SCC 27***, it was imperative for the Plaintiff to have sought the relief of declaration that the termination of the agreement to sell by the Defendant No.1, by letters dated 1st March and 22nd March, 2005, was void. The learned Single Judge negated the plea of the Plaintiff that the relief of specific performance ought to be granted since the present case was distinguishable from that of ***I. S. Sikandar (supra)***.

20. This Court has again been taken through the decision in ***I. S. Sikandar (supra)*** by the learned counsel for the parties. According to Mr Dhingra, learned counsel for the Plaintiff, the decision in ***I. S. Sikandar (supra)***, has been distinguished in a subsequent judgment of the Supreme Court in ***A. Kanthamani v Nasreen Ahmed (2017) 4 SCC 654***.

21. On the other hand, Mr Anand, learned counsel for the Respondent No.1, pointed out that in a recent judgment in ***Mohinder Kaur v Sant Paul Singh (2019) 9 SCC 358***, ***I. S. Sikandar (Dead) by L.Rs v K. Subramani (supra)*** has been reiterated.

22. As noticed by the learned Single Judge in the impugned order dated 23rd February 2017, one of the specific issues that arose for consideration in the Supreme Court in ***I. S. Sikandar*** (*supra*) was whether the original suit filed by the Plaintiff in the said case, seeking a decree for specific performance without seeking declaratory relief with respect to the termination of the agreement to sell rescinding the contract, was maintainable in law. In answering the said issue in the negative, the Supreme Court held as under:

“37. As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of agreement of sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of agreement of sale and consequential relief of decree for permanent injunction is not maintainable in law.

38. Therefore, we have to hold that the relief sought for by the plaintiff for grant of decree for specific performance of execution of sale deed in respect of the suit schedule property in his favour on the basis of non-existing agreement of sale is wholly unsustainable in law. Accordingly, Point (i) (see para 32.1) is answered in favour of Defendant 5.”

23. In ***A. Kanthamani v Nasreen Ahmed*** (*supra*), while the decision in ***I. S. Sikandar*** (*supra*) was noticed, the Supreme Court observed that it was distinguished on the ground that it turned on “facts involved therein”. Importantly, the correctness of the decision in ***I. S. Sikandar*** (*supra*) was not doubted. On the other hand, in ***Mohinder Kaur v Sant Paul Singh*** (*supra*), another Bench of the Supreme Court of coordinate strength quoted

paras 37 and 38 of the decision in *I. S. Sikandar (supra)*, impliedly approving it. The fact remains, therefore, that *I. S. Sikandar (supra)* still holds the field.

24. The only question that arises for consideration is whether on the facts of the present case, that decision would apply. In the letter dated 1st March, 2005, written by the director of the Defendant No.1 (i.e. K. Sundaram, Defendant No.2 in the suit), it was clearly mentioned that since the Defendant No.1 had no legal or moral right to retain Rs.11 lacs paid by the Plaintiff in February, 2004, in the background of the fact that the Plaintiff had taken an unusually long time for due diligence, and had not completed its part of the deal by not paying the sale consideration despite several requests, it was requested that the agreement signed by the Defendant No.2 on behalf of the Defendant No.1, and kept by the Plaintiff sealed in the locker, “be cancelled and returned to me”. This amounted to cancellation of the agreement. This, in any event, stood confirmed by the subsequent letter dated 22nd March, 2005, written by the Defendant No.2, where he stated in no uncertain terms “Please note that the deal stands cancelled as indicated in my last letter because of your failure to pay the total sale consideration”.

25. The Court is, therefore, unable to agree with Mr Dhingra that the facts of the present case are distinguishable from the facts in *I. S. Sikandar (supra)*. The sequitur is that the learned Single Judge was right in concluding that in terms of the law explained by the Supreme Court in *I. S. Sikandar (supra)*, the failure by the Plaintiff to seek a specific declaration to declare the cancelling of the agreement by the Defendant No.1 as void would lead

to central prayer in the suit of specific performance not capable of being granted.

26. In that view of the matter, FAO (OS) No.131/2017 stands dismissed.

27. In view of the above conclusion, there is no scope for interference with the other two impugned orders of the learned Single Judge and, therefore, the accompanying appeals are also dismissed. Pending application also stands disposed of. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 16, 2020

rd