

19.
15.11.2021
S.D.

C.O. 4172 of 2019
With
CAN 1 of 2020
CAN 2 of 2020
(Not found)
CAN 3 of 2020
(Not found)

M/s. Ashroy Construction & Ors.
Vs.
Sri Pankaj Mitra & Ors.

Mrs. Shohini Chakraborty
Ms. Prajaaini Das

...For the Petitioners.

Mr. Rahul Karmarkar
Mr. Saptarshi Datta

..For the Opposite Party.

In this revisional application, the petitioner has assailed the order dated September 24, 2019 passed in title Suit No. 11 of 2019 (SL 72 of 2019) by the Civil Judge, Sixth Court (Second Division) at Alipore, South 24 Parganas.

Heard the learned Advocate for the parties.

It is contended on behalf of the petitioners that the learned Judge has passed the impugned order rejecting the application for grant of judgment in terms of the admission made by the defendants as per the provision of Order 12 Rule 6 of Civil procedure Code. Accordingly,

the petitioners have sought for setting aside the order as bad in law and in fact.

The background leading to this revisional application is that some times in February 2018, the plaintiffs/opposite parties filed a Suit for Specific Performance of Contract under Section 12 of the Specific Relief Act, 1973 and for other reliefs wherein the plaintiffs/opposite parties sought for decree for Specific Performance of Contract enforcing the obligations of the defendants contained in the registered Development Agreement dated 17.4.2014 regarding allocating the shares of the plaintiffs by specifying the flats/units/spaces/parking spaces they are entitled to in terms of the Development Agreement, and also to hand over possession of the allocated and specified flats/units/spaces/parking spaces to the plaintiffs in terms of the said Development Agreement dated 17.4.2014 before creating any further third party rights in respect of the said property.

The defendant/petitioner no. 1 having entered appearance in the suit filed written statement to contest the suit denying all materials particulars made in the plaint contending *inter alia* that plaintiffs have no cause

of action for the suit and the defendants/petitioners no.1 to 3 filed an application under Order 12 Rule 6 of the Civil Procedure Code on 10.4.2019 praying for judgment on admission on the plaintiffs in respect of 30% constructed areas and to direct the plaintiffs to return a sum of Rs.6,00,000/- to defendant/petitioner no. 1.

Mrs. Shohini Chakraborty, learned Advocate for the petitioners has brought my attention to the averment in paragraph 6 of the application pointing out that the defendant nos. 1 to 3 have jointly admitted that the plaintiffs are entitled to 30% of constructed area consisted of flat in each floor and 30% of car parking spaces in the ground floor in the building. Admittedly, the direction has been sought for by the petitioners/defendant nos. 1 to 3 for handing over possession of 30% allocation of the constructed area consisted of flat and car parking spaces in favour of the plaintiffs in terms of the development agreement dated 17.4.2014 and so also as per the sanction of the building plan no. 2015130034 dated 7.5.2015 and subsequent modification thereto and further the petitioners have shown their readiness and willingness to provide 30% allocated constructed areas aforesaid provided the plaintiffs return a sum of Rs.6,00,000/- only

to the defendant nos. 1 to 3 which they had received by virtue of development agreement dated 17.4.2014. Development agreement dated 17.4.2014 has been pressed in service before this Court which does not contain any provision for return of the said amount or the fact that while entering into development agreement, the said sum of Rs.6,00,000/- was paid to the plaintiffs holding them liable to repay the same to the defendants/petitioner nos. 1 to 3.

On behalf of the plaintiffs/opposite parties, it is pointed out that the petitioners have sold the best part of the flats according to their choice to the intending buyers and the plaintiffs/opposite parties cannot be treated as beggars as if a beggar cannot be a chooser. My attention is invited to Clause 8.1 under Article VII relating to dealings of spaces of the building to contend that the plaintiffs have the first preference to choose the flats and car parking spaces as per development agreement which provides as under:-

“8.1. The Developer shall on completion of the building/s hand over possession of the Owners’ allocation before handing over possession of the flats/floor/car parking space/spaces to the intending purchaser/purchasers in the proposed new building to be selected by the Developer.”

Having regard to the said clause, it appears that prima facie, the opposite parties/plaintiffs are entitled to be offered their possession before the developer defendants/petitioners hand over possession of the flats/units/spaces/parking spaces to the intending purchaser/purchasers in the proposed new building. The attention is also adverted to clause 5.4. of Article V, which provides thus:-

“5.4 After submitting the final plan to the Kolkata Municipal Corporation, in respect of the said premises, the Owner and the Development shall execute a Supplementary Agreement in respect of their allocation if any specifying the flats/floors/car parking space/spaces and other terms if any and the Supplementary Agreement will be registered in respect of the allocation of the Owner and the Development, if required.”

Thus, it is contended by learned Advocate for the opposite parties that all these factual aspects are required to be dealt with on evidence by the Trial Court and the order impugned has been rightly passed by the learned Trial Court urging to affirm the order impugned.

This Court having perused the order impugned and having regard to the rival contention hold that the Trial Court has rightly rejected the application under Order 12 Rule 6 of CPC as the admission made by the defendants is not unequivocal and unconditional and the

terms and conditions of the agreement were not fully complied by the defendants

It emerges from the materials placed on record that alleged admission made by the defendants/petitioners is not in clear crystal term and is not unambiguous to warrant a judgment on admission. Therefore, I do not find any ground to set aside the order impugned.

Accordingly, the revisional application, being C.O. 4172 of 2019 is dismissed, however, without any order as to costs.

All connected applications stand disposed of.

Let a copy of this order be communicated to the learned Trial Court with the direction to expedite the suit as expeditiously as possible.

All parties are to act on server copy downloaded from the official website of the Court.

(Shivakant Prasad, J.)