$~Suppl.-18

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

\+ RFA(OS) 12/2021, CM APPLs. 13226-28/2021

SH. MAHENDER PAL CHHABRA & ANR. ..... Appellants

Through: Mr. Alok Kumar, Sr. Advocate with Mr. Abhishek Paruthi, Advocate.

versus

SH. SUBHASH AGGARWAL ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE ASHA MENON

% Date of Decision: 12th April, 2021

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HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. The appeal has been heard by way of video conferencing.

2. Present appeal has been filed challenging the judgment and decree dated 15th February, 2021 in CS(OS) 1765/2008 whereby the suit of the plaintiff/respondent for specific performance has been decreed.

3. Learned senior counsel for the appellant submits that Section 16(c) of the Specific Relief Act, 1963, as it existed at the time of the agreement to sell, as also at the time of the institution of the suit, provided that specific performance of a contract cannot be enforced in favour of a person who fails

to aver and prove that he had always been ready and willing to perform the essential terms of the contract.

4. He contends that the plaintiff/respondent had failed to show that he had the arrangement to pay the balance sale consideration under the contract on the due date and thus, it could not be said that he was ready and willing to perform the essential terms of the contract.

5. Learned senior counsel for the appellant submits that the documents submitted by the plaintiff/respondent were not adequate to prove that he had ability to pay the balance sale consideration and he had only made a bare statement to that effect. He submits that the assertion of the plaintiff/respondent that he had entered into an agreement to sell one of his properties and the payment was yet "to be realised" from it, is an admission that as on 10th May, 2008, the last date for completion of the transaction in terms of the agreement between the plaintiff and the defendant; the plaintiff/respondent was not ready to perform the contract.

6. Learned senior counsel for the Appellant relies upon the judgment in the case of ***M K Chhabra Vs Damanjit Kaur, 2019 LawSuit (Del) 54*** which has held that a mere *ipse dixit* is not sufficient to prove readiness/financial capacity to pay balance consideration. He also submits that the Supreme Court in ***N P Thirungnanam Vs. R Jagan Mohan Rao, (1995) 5 SCC 115*** has held that financial capacity has to be proved to exist right from the date of entering into the agreement to sell till the date of institution of the suit.

7. A perusal of the paper book reveals that the same contention was rejected by the learned Single Judge in the following terms:-

> "*19. This brings me to the other aspect of the matter as to whether the plaintiff was ready to pay the balance sale*

consideration during the relevant period i.e. commencing from the date on which ATS was executed up until today. The plaintiff, in this behalf, has stated that he had rental income available of nearly Rs. 47,70,060/-

19.1. The plaintiff, in this context, has inter alia placed reliance on the ITRs filed by him both as an individual as well as Karta of the HUF in pursuance of the order dated 19.11.2015, passed by this Court.

19.2. A perusal of the profit & loss account and balance sheet appended to the ITR for the financial year 2006-2007 [AY 2007-2008] would show that the plaintiff not only earned a substantial rental income but also has shares in immovable assets. [See: Ex.DW1/PX4].

19.3 It is to be borne in mind that the immovable assets are ordinarily shown in the balance sheet at book value and that their market value could be much higher. The fact that the building located at 29/4, Shakti Nagar, Delhi obtained an annual rent of Rs.47 lakhs would show that it would have, approximately, a value of Rs. 9.40 crores if a rate of return of even 5 % in the form of rent is taken into account.

Assessee	Subhash Chander Aggarwal		Assessee	Subhash Chander Aggarwal (H.U.F)	
Particulars	Income Tax Return FY 2006-07	Income Tax Return FY 2007-08	Particulars	Income Tax Return FY 2006-07	Income Tax Return FY 2007-08
(A) Rent received from following immovable properties: (i) 29/4, Nangla Park, Shakti Nagar, Delhi-11007	17,52,500	47,40,060	(A) Rent received from following immovable properties:		13,11,000
(B) Income from shares		9,01,759	(B) (i) C-3,Ashok vVihar, PH-1, Delhi-110052		3,13,500
(C) Net profit as per profit and loss a/c			(ii) 91/7, Wazipur Industrial area,Delhi-110052		1,67,318
			(iii) C-14, Second floor, South Ext-II, New Delhi, Delhi-110049		5,82,413

			Sawan Knowledge Park, D-507, T.T.C Industrial Area, MIDC, Turbhe, Navi Mumbai, Maharashtra-400705 (C) Net profit as per profit and loss a/c (i) C-3, Ashok		16,55,462
	Balance Sheet as on 31.03.2007	Balance Sheet as on 31.03.2008		Balance Sheet as on 31.03.2007	Balance Sheet as on 31.03.2008
(A) Fixed assets (i) 29/4, Nangla Park, Shakti Nagar, Delhi-110007 (ii) (ii) C-2/29, Ashok Vihar, PH-II, Delhi-110052(25% Share) (iii) Plot at Kundli (B) Investment in PPF (C) UTI Bank S/B (D) Loans and advances (i) Manoj Kumar c/o Chabra Bhai (ii) Nitika	35,54,140 3,51,000 14,17,500 12,01,458 3,87,090	35,54,140 11,42,689 14,25,100 13,68,014 12,00,000 5,00,000 2,20,740	Fixed assets (i)Agricultural Land (20% share) Main Road Palla, Bakhtawarpur, Delhi-110036 (ii) C-2/29, Ashok Vihar, PH-II, Delhi- 110052 (iii)C 91/7, Factory (30% share), Wazipur Industrial Area, Delhi-110052 (B) Investment in PPF (C) Current assets Axis Bank		27,83,906 41,02,417 48,62,000 4,10,664 3,93,021

Aggarwal (iii) Skylark Industries					

19.4 The aforesaid would show that the plaintiff had the necessary wherewithal to pay the balance sale consideration. It is established law that in demonstrating to the Court, in an action for specific performance, that the plaintiff has the financial capacity to fulfil the bargain, he is not required to place before the Court a stitched-up scheme of finance. All that the plaintiff is required to demonstrate is that he has the necessary financial wherewithal. [See: ***Bank of India, Limited, and Others vs Jamsetji A.H. Chinoy and Messrs. Chinoy and Company,*** *1949 SCC OnLine PC 81; followed by the Supreme Court in* ***Nathulal vs Phoolchand****, 1970 SCR (2) 854]*
19.5 There is, thus, to my mind, enough evidence placed on record that the plaintiff had the means of obtaining funds to pay the balance sale consideration contrary to the contention advanced on behalf of the defendants."

8. In any event, this Court finds that Clause 6 of the agreement to sell executed between the parties reads as under:-

"*6. That the first party has agreed above shall get the mutation and freehold done before the final date of payment i.e. 10.05.2008. The final payment will be made only after the conversion and mutation of above mentioned property is completed.*"

9. From the aforesaid Clause, it is apparent that final payment of Rs. 5.21 crores (Rupees Five Crores and twenty one lakhs only) was to be made only after mutation was obtained and the suit property had been converted from leasehold to freehold. Consequently, the condition precedent for

making balance sale consideration under the agreement to sell was mutation and conversion of the suit property. It is not the appellant's case that mutation had been obtained and the suit property had been converted. Consequently, there was no occasion for the plaintiff to pay the balance sale consideration. Further, this Court is in agreement with the view of the learned Single Judge that in the facts and circumstances of the present case, it cannot be said that the respondent/plaintiff was not ready and willing to perform his obligations under the agreement to sell.

10. Accordingly, the present appeal being bereft of merit is dismissed along with all pending applications.

11. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

ASHA MENON, J

APRIL 12, 2021
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