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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 23rd January, 2024***
+ **CS(OS) 19/2010, CC 18/2010**

KUNWAR S VISHAL Plaintiff

Through: Mr. Sumeet Batra, Advocate.

versus

KOHLI REALTORS PVT LTD Defendant

Through: Mr. Dinesh Garg and Ms. Rachna
Agarwal, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

I.A. 6529/2018 (under Order VI Rule 17 CPC filed by the plaintiff for amendment of the plaint)

1. An application under Order VI Rule 17 of the Code of Civil Procedure (*hereinafter referred to as "CPC"*) has been filed on behalf of the plaintiff for amendment of the plaint.
2. It is submitted in the application that the plaintiff has filed the suit for Declaration and Possession asserting that he is the absolute owner of the property bearing No.D-229, Defence Colony, New Delhi. The subject matter of the Suit was a Collaboration Agreement dated 06.12.2006 between the plaintiff and defendant No.1, the Builder. The plaintiff claimed that the defendant No.1, in order to gain undue advantage over the plaintiff, inserted certain camouflaged, vague, confusing conditions in the Collaboration



Agreement to exploit and twist it at the later stage. It is further asserted that the consent of the plaintiff to enter into the Collaboration Agreement was obtained through fraud and mis-representation. Further, during the pendency of the Suit, the defendant No.1 illegally and maliciously executed two separate Sale Deeds in favour of defendant Nos.2 and 3 on 30.07.2008 and 12.08.2008 respectively, in respect of entire Basement, Ground Floor and First Floor of the suit property despite the restraint order dated 09.04.2008 passed by this Court in another suit bearing CS(OS) No.582/2008. The Contempt proceedings are already pending against the defendants in the said matter before the District Court, Saket. It is asserted that till date defendant No.1 has not given the better particulars of the Sale Deeds executed by him.

3. It is further asserted that in terms of Clause 3 of the Collaboration Agreement dated 06.12.2006 plaintiff is entitled to damages for delay in completion of the works @ Rs.2,000/- per day subject to force majeure, Court's Order or action by any Statutory Authority or for any reason beyond the Controller or the Developer. It is submitted that till date the defendant No.1 has performed only 40% of the work entrusted upon him as per the Collaboration Agreement and thus, the work is still incomplete. The photographs have been filed which show incomplete work in respect of the Second Floor.

4. It is asserted that *vide* Order dated 18.01.2018, this Court had observed that the appropriate remedy available for the plaintiff was to claim damages, who consequently moved the present amendment application to seek leave of this Court to incorporate the relief of damages @ Rs.2,000/- per day from 12.04.2008 till 31.03.2018 which comes to Rs.73,00,000/- plus 12% interest per annum of Rs.53,65,000/-, i.e. Rs.1,26,65,000/- and



Mandatory Injunction by amending the title and also to add paragraph 14(a)(i), a(ii) and a(iii) in the plaint. Moreover, the Prayer Clause is also sought to be amended to include the claim for damages and Mandatory Injunction.

5. **The application is contested by defendant No.3** who has submitted that the present suit was registered on 11.01.2010 but the pleadings are yet not completed. Several amendments have been carried out by the plaintiff since 2016.

6. It is asserted that this Court *vide* Order dated 14.05.2018 had observed that the amendment of the plaint to claim Decree for Damages, which is sought to be introduced at this stage cannot be claimed in perpetuity by the plaintiff and is barred by limitation. The application for amendment of the plaint was kept pending and the suit was not dismissed and another opportunity was granted to the plaintiff. Thereafter, an Appeal being FAO (OS) 89/2018 was filed by the plaintiff against the Order dated 14.05.2018 but the Appeal has been dismissed *vide* Order dated 10.10.2018.

7. It is submitted that the present application cannot be allowed for the reason that :

- (i) It does not specifically set out as to what is proposed to be omitted, altered or substituted in the plaint;
- (ii) The claim for damages is barred by limitation as the cause of action for claiming the damages is not a continuing cause of action; and
- (iii) The possession of the Second Floor was taken by the plaintiff in terms of the Collaboration Agreement prior to 2009 and he cannot be claiming damages now by asserting that only 40% of



the construction had been completed in terms of the Collaboration Agreement.

8. It is further asserted that the present application is an afterthought to avoid rejection of plaint and is not bonafide.

9. **Submissions heard.**

10. The facts in brief are that:

- (i) the defendant No.1 had entered into a Collaboration Agreement with the plaintiff for re-development of the property of the plaintiff, in consideration of which, the basement, ground floor and first floor of the property were to fall to the share of the defendant No.1 and the newly constructed remaining portions of the property were to fall to the share of the plaintiff;
- (ii) that the plaintiff had also executed a General Power of Attorney (GPA) in favour of the defendant No.1 authorizing the defendant No.1 to execute the Sale Deeds of the portions of the property which under the Collaboration Agreement, were to fall to the share of the defendant No.1;
- (iii) that the defendant No.1, acting under the said GPA has on 30.07.2008 executed the Sale Deeds, with respect to the basement and ground floor in favour of the defendant No.2 and on 12.08.2008 with respect to first floor in favour of defendant No.3;
- (iv) that the plaintiff has filed the present suit contending breaches on the part of the defendant No.1 in execution



of the Collaboration Agreement.

11. On these facts, the plaintiff originally in his plaint dated 07.12.2009 had made the prayers as under :

“(i) A decree for declaration in favour of plaintiff and against the defendant declaring that Collaboration Agreement dt.06.12.06 is void for uncertainty.

Or in the alternative

A decree for declaration in favour of plaintiff and against the defendant declaring that Collaboration Agreement dt.06.12.06 is voidable as the defendant played fraud and misrepresentation in obtaining the consent of the plaintiff and has been correctly suspended/revoked by the plaintiff and has become null and not enforceable.

(ii) A decree in favour of plaintiff and against the defendant for possession of the property in suit, i.e. property bearing No.D-229, Defence Colony, New Delhi-110024.

(iii) Such other or further order which this Hon'ble court may deem fit and proper may also be passed in favour of the plaintiff and against the defendant.”

12. The plaint was amended and in the amended plaint dated 22.11.2017 plaintiff had made the following prayers:

“(i) A decree for Declaration in favour of plaintiff and against the defendant declaring that Collaboration Agreement dated 6.12.2006 is void for uncertainty;

Or in the alternative

A decree for declaration in favour of plaintiff and against the defendant declaring that Collaboration Agreement dated 6.12.2006 is voidable as the defendant played fraud and misrepresentation in obtaining the consent of the plaintiff and has been correctly suspended/revoked by the plaintiff and has become null and void and not-enforceable;

(ii) A decree of Declaration in favour of the plaintiff and against the defendants declaring thereby that the two sale deeds executed by the defendant No. 1 in favour of



the defendants No. 2 and 3 respectively on 30.7.2008 and 12.8.2008 being in respect of the entire basement and ground floor of the suit property, registered as No.11882 in Additional Book No. I volume No.8708 on pages 124 to 131 on 30.7.2008 in the office of Sub Registrar V, New Delhi and the other in favour of the defendant No. 3 in respect of the first floor of the suit property which was registered as No. 12625 in Additional Book No. I volume No.8742 on pages 50 to 60 on 12.8.2008 in the office of Sub Registrar V, New Delhi, were both illegal, without authority vesting in the defendant No.1 and consequently illegal, null and void and ineffective qua the plaintiff in any manner whatsoever;

(iii) A decree in favour of plaintiff and against the defendants No.1 to 3 for recovery of possession of the property in suit i.e. property bearing No.D-229, Defence Colony, New Delhi-110024;

(iv) That a consequential decree for Permanent Injunction be also granted in favour of the plaintiff and against the defendants No. 1 to 3 thereby restraining them, their agents, representatives, assigns, etc. from selling, transferring, alienating or otherwise creating any third party charge over the suit property bearing No. D-229, Defence Colony, New Delhi-110024 or any part thereof in any manner whatsoever without due recourse to law;

(v) Costs of the suit be also awarded in favour of the plaintiff- and against the defendants in general and the defendant No.1 in particular;

(vi) Such other or further order which this Hon'ble Court may deem fit and proper may also be passed in favour of the plaintiff and against the defendant."

13. The plaintiff now by way of the amendment, intends to claim damages at the defined rate and also seek Mandatory Injunction against the defendant to direct him to complete the Collaboration Agreement.

14. It is pertinent to note that vide Order dated 07.11.2019, the plaintiff



had dropped its relief against defendant No.2 and 3 for Cancellation of sale Deeds executed in their favour and consequently, the defendant Nos.2 and 3 were deleted from the array of parties and the reliefs qua them were also dismissed. Therefore, the challenge to the two Sale Deeds in respect of Basement, Ground Floor and First Floor got dropped.

15. It is not in dispute that a Collaboration Agreement dated 06.12.2006 was executed between the parties pursuant to which the plaintiff got possession of the Second Floor in the year 2009. The plaintiff had then filed a Suit in 2009 for getting a declaration that the Collaboration Agreement was void or in the alternative voidable.

16. The counsel for the plaintiff has argued that this Collaboration Agreement was not admissible in evidence as it was neither registered nor the requisite stamp duty was paid. It is interesting to note while the plaintiff is trying to seek an amendment to incorporate the relief of damages in terms of Clause 3 of the Collaboration Agreement, he himself is seeking to avoid the Collaboration Agreement. Patently, contrary arguments have been raised by the plaintiff.

17. It is not denied that the possession of the Second Floor had been taken by the plaintiff. Now by way of this application, it is being claimed that only 40% work of the Second Floor was done and Mandatory Injunction is sought to be added for giving directions to defendant No.1 to complete the remaining work, by way of amendment.

18. Pertinently, the plaintiff had taken the possession in 2009. In case the work was not done in accordance with the Collaboration Agreement by the defendant No.1, the appropriate remedy was to get the work completed at his cost and to claim damages from the defendant No.1; as has also been



observed in Order dated 14.05.2018. It has been rightly argued on behalf of defendant No.1 that there cannot be any Mandatory Injunction for completion of the Collaboration Agreement as is sought by way of amendment by the plaintiff. Further, the proposed amendment of Mandatory Injunction for giving directions to defendant No.1 to complete the remaining work, is not maintainable under Section 14(b) of the Specific Relief Act which provides that the legally determinable contracts cannot be asked to be specifically performed.

19. The contention of the plaintiff that since the work has not been completed till date, the damages are accruing day to day was rejected vide Order dated 14.05.2018, wherein it was observed that the plaintiff by not getting the work done leads to only one inference that there was no uncompleted work, especially when no claim for Damages was originally made on account of delay in completion from the defendants.

20. Also, the damages which are sought to be incorporated in the prayer paragraph are not tenable as they relate back to 2009 and the proposed amendment in 2018 is patently barred by limitation. It is observed that such plea of damages, is contrary to his own contention and to the original prayer for avoidance of the Contract.

21. The claim for damages is not only an afterthought as borne out from the assertions of the plaintiff, but is contradictory to his own plea of avoiding the Collaboration Agreement, and is also patently barred by limitation.

22. The proposed amendments are without merit and the amendment application is hereby, dismissed.

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23. The Written Statement /counter-claim of defendant No.1 and 3 is on record.

24. List before this Court on 08.04.2024.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 23, 2024
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