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

% ***Date of decision: 11th November, 2024***

+ **C.R.P. 71/2024, CM APPL. 10068/2024 (stay)**

M/S PAUL ENGINEERING WORKS AND ANR.....Petitioners

Through: Mr. Braj Bhushan Lal Karn,
Advocate.

versus

SHRI RAM DIYA SHARMARespondent

Through: Mr. Pradeep Kumar Bhardwaj,
Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

C.R.P. 71/2024

1. The Revision Petition under Section 115 of the *Code of Civil Procedure, 1908* ('CPC' hereinafter) has been filed on behalf of the Revisionist (Defendant in the Suit), to challenge the Order dated 20.01.2024 whereby the Application under Order VI Rule 17 CPC of the Plaintiff/Respondent herein, has been allowed.

2. The Plaintiff/Respondent had filed a *Suit for Specific Performance of Agreement to Sell, dated 06.07.2015, Possession and Permanent Injunction*. The brief facts are that the Defendant agreed to sell the Industrial Plot No. 331, Sector-L, DSIIDC, Industrial Complex, Bawana-II, Bhorgarh Industrial Area-110039 (hereinafter referred to the 'Suit Property') vide Agreement to Sell dated 06.07.2015, for a total sale consideration of Rs.59,21,000/- out of



which, the Plaintiff (the Purchaser) paid a sum of Rs.6,00,000/- to the Defendant, which was duly recorded in the Agreement to Sell. The Defendant/Owner in terms of the Agreement to Sell, was required to obtain all necessary permissions/sanctions of building plan, from the Office of the MCD. It was also agreed that the Plaintiff/buyer on obtaining the photocopy of the registered Perpetual Lease Deed from the Defendant, would clear the outstanding loan amount of Delhi Financial Corporation ('DFC' *hereinafter*), taken by the Defendant, within one month. The remaining payment was agreed to be made by the Plaintiff to the Defendant, within 15 days, from the date of handing over the Discharge Certificate from DFC, by the plaintiff to the Defendant.

3. The Plaintiff claimed that the Defendant failed to take steps in getting the Perpetual Lease Deed of the Suit Property executed in terms of the Agreement to Sell, dated 06.07.2015. The Plaintiff/Purchaser had made several attempts but the Defendant acted in complete defiance. Plaintiff served a Legal Notice dated 01.10.2016, to which the Defendant replied on 06.12.2016 and pleaded an Oral Agreement that the expenses for the execution of the Lease Deed with DSIIDC, was agreed to be borne by the Plaintiff and not by the Defendant. Thereafter, the Plaintiff kept on persuading the Defendant telephonically, but the Defendant delayed the process and despite repeated opportunities, failed to discharge the contractual obligations under Agreement to Sell.

4. The Defendant filed an Application under Order VII Rule 11 CPC wherein an objection was taken about the maintainability of the Suit, *on the ground of limitation*. The Plaintiff then filed an Application under Order VI Rule 17 CPC, to further explain that it is the Defendant, who has delayed the



performance of his part of the Agreement to Sell. He sought an amendment to claim that the Defendant never specifically refused to get the Lease Deed executed as has been also reflected in the Legal Notice dated 09.01.2017 and Reminder dated 06.02.2017, sent by the Defendant to the Plaintiff, which in fact reflected the willingness of the Defendant to execute the Perpetual Lease Deed. Further, the Defendant admitted the execution of the Agreement to Sell in the Legal Notice dated 09.01.2017 sent by him to the Plaintiff. It was further claimed that the Defendant was threatening the Plaintiff that the Plaintiff has to pay Rs.4,00,000/- towards the execution of the Perpetual Lease Deed. The Respondent/Plaintiff then moved an Application under Order 6 Rule 17 of the CPC dated 24.02.2023 to Amend the plaint on to amend the word “refused” by inserting the word “delayed” to explain that the suit is not time barred.

5. The learned ADJ duly considered these proposed Amendments and relied upon Madina Begum and Another vs. Muti Prasad Pandey & Ors. (2016) 15 SCC 332, Civil Appeal No. 6687/2016, wherein it was observed that when no date of Specific Performance is fixed, the limitation of three years would begin when the plaintiff notices that the Defendant has refused the Performance of the Agreement. The proposed Amendments were consequently allowed vide Order dated 20.01.2024 .

6. Aggrieved, the revisionist has challenged the impugned Order, essentially on the *ground* that in the Reply dated 06.12.2016, the Plaintiff/Respondent had clearly indicated his intention to *not abide* by the Agreement to Sell. In view of these clear admissions, the Amendment could not have been allowed to permit the Plaintiff to retract from the admissions already made in the Plaint. It is submitted that the Amendment Application



was prompted by the Application under Order VII Rule 11 CPC, filed was by the Revisionist on 04.02.2023; merely to counter the objections taken by the Defendant/Revisionist, for rejection of the Plaint. In fact, from the averments as originally made in the Plaint, it is evident that the cause of action accrued in December, 2016 while the present Suit has been filed on 10.01.2021 and is clearly barred by limitation. The proposed Amendments tantamount to retraction of the admissions made and could not have been allowed. Hence, the present Revision has been filed to challenge the Order allowing the Amendment.

7. *Learned counsel on behalf of the Respondent (plaintiff)*, however, has argued that in the Original Plaint itself, the Plaintiff had indicated that the Defendant/Revisionist had been avoiding the execution of the Sale Deed till 2019 and the Suit has been accordingly filed for *Specific Performance*. It is submitted that the Defendant nowhere clearly declined to execute the Sale Deed but was only avoiding it and it was only in 2019 that when he eventually refused to execute the Agreement to Sell that the cause of action arose and the Suit has been filed. It is further submitted that the proposed Amendments were only to further explain the averments already made in the Plaint and did not amount to any retraction of the admissions. The Revision Petition is, therefore, contested and it is stated that it is liable to be dismissed.

8. **Submissions heard.**

9. Admittedly, the Respondent/Plaintiff had filed the *Suit for Specific Performance of the Agreement to Sell dated 06.7.2015*. The perusal of this Agreement to Sell, shows that there was no date *per se* that was contemplated in the Agreement to Sell for execution of the Sale Deed; rather



it contained the Clause that the Sale Deed shall be executed after the outstanding loan amount taken by the DFC, shall be cleared by the plaintiff/respondent.

10. *Learned counsel on behalf of the Revisionist/Defendant* submits that the loans have been cleared after the filing of the Suit in 2022.

11. It is pertinent to observe that in the Paragraph 28 of the Original plaint it had been stated that the conduct of the Defendant in the month of November, 2019, did not seem to be keen to execute the Agreement to Sell and there was an apprehension of creation of the third party rights in the Suit Property. Consequently, the Plaintiff/Respondent wrote a Letter to DSIIDC on 06.11.2019, informing that the DSIIDC may not permit the transfer of the Property.

12. From the comprehensive reading and the contents of the Plaint, it is evident that though it may not be a perfectly drafted Plaint, but clearly it is nowhere stated that there was a clear refusal by the Defendant, to execution of the Sale Deed pursuant to Agreement to Sell. What is reflected from the various averments made in the Plaint, is that the Defendant had been reluctant and not forthcoming in the execution of the Sale Deed. It cannot be said that there was any retraction of any admission as is claimed by the Revisionist.

13. The learned ADJ has rightly observed that the case was at the stage of completion of pleadings and taking a liberal view, concluded that the Amendment could not be denied. Furthermore, as observed by the Apex Court in the Case of Madina Begum (supra), the refusal to execute the Sale Deed, has to be specific and that where there are no timeframe stipulated in the Agreement, and there are averments in the Plaint that there was no



definite denial, it cannot be said that the cause of action did not relate to December 2019, as is alleged by the Revisionist.

14. Insofar as, the Application under Order 7 Rule 11 CPC is concerned, it is evident that whatever be the grounds available to claim that Plaintiff does not disclose any cause of action, can be agitated even now and in case, any relief was *allegedly barred by limitation* as per the averments of the Plaintiff, the same can still be considered by the learned ADJ. The Amendments allowed are always subject to the plea of limitation, which may have been taken by the Defendant.

15. There is no merit in the present Revision Petition, which is hereby dismissed.

16. The Revision Petition is disposed of accordingly along with the pending Application.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 11, 2024/RS