



\$~28

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

+ FAO(OS) 77/2024 & CM APPL. 32186/2024

**URMILA VOHRA (SINCE DECEASED) THROUGH LR. SHRI
RAJESH VOHRA AND ANR. Appellant**

**Through: Mr. Anurag Ojha, Mr. D.N.
Chaturvedi, Mr. Deepak Somani, Mr.
Vipul Kumar and Mr. Karan
Aggarwal, Advocates**

versus

JANAK PROPERTIES PVT LTD & ANR. Respondent

**Through: Mr. Ashish Kapur, Ms Chhavi Luthra
and Mr. Anmol Kapur, Advocates
Mr. Anil Kher, Sr. Advocate with Mr.
Kunal Kumar, Advocate for R-2**

%

Date of Decision: 28th May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

CM APPL. 32187/2024(for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

FAO(OS) 77/2024 & CM APPL. 32186/2024

1. Present appeal has been filed under Section 10 of the Delhi High Court Act, 1966 ('Act of 1966') seeking setting aside of judgment dated 07th



May, 2024 ('impugned judgment') passed in CS (OS) 1210/2013, whereby the interlocutory applications¹ filed by the Appellants herein in the underlying disposed of suit have been dismissed by the learned Single Judge.

2. The Appellant also seeks to impugn the order and decree dated 15th March, 2022 ('impugned order') passed in the underlying disposed of suit, whereby the underlying suit was decreed with the consent of Respondent Nos. 1 and 2 in the application filed under order XXIII Rule 3 of the Code of Civil Procedure, 1908 ('CPC') on the basis of a Settlement Agreement dated 25th January, 2021 signed before the Delhi High Court Mediation and Conciliation Centre ('Mediation Centre').

3. The brief facts relevant for deciding the present appeal are as follows:

3.1. It is a matter of record that on 24th January, 2013, the Appellant(s) and Respondent No. 1 herein entered into an agreement to sell ('ATS') with respect to property bearing number 14-A/69, WEA Karol Bagh, New Delhi-110005 ('subject property') for a total sale consideration of Rs. 3,61,00,000/-. Addendum to the said ATS was also executed on 19th July, 2014.

3.2. It is stated that as per ATS, it was decided that Respondent No. 1 will obtain possession of the suit property from Respondent No. 2 in order to execute the sale deed in favour of the Appellant(s).

3.3. It is stated that the Appellant(s) had paid Rs. 2.5 crores as a part-consideration against the purchase of the subject property at the time of execution of ATS. However, since the demeanor of Respondent No. 1 indicated unwillingness to execute the sale deed, the Appellant(s) filed a suit

¹ I.A. Nos. 7945/2023, 4391/2021 and 5902/2022



for specific performance against Respondent No. 1 before this Court on the original side and the said suit was separately numbered as CS (OS) 325/2017 titled as ***Urmila Vohra & Anr. V. Janak Properties Private Limited & Ors.***

3.4. It is stated that Appellant(s) learnt that Respondent No. 1 had filed the underlying suit² against Respondent No. 2 seeking recovery of possession of the subject property. It is stated that since the Appellant(s) acquired interest in the subject property by way of ATS dated 24th January, 2013, therefore, on 06th November, 2019, the Appellant(s) filed an interlocutory application³ under Order I Rule 10 of CPC, in the underlying suit, thereby seeking impleadment in the said suit proceedings.

3.5. It is stated that, in the interregnum, the Respondent Nos. 1 and 2 entered into a Mediation Settlement dated 25th January, 2021 and settled the matter in CS(OS) 1210/2013. It is stated that subsequently, Respondent Nos. 1 and 2 filed a joint application i.e., I.A. No. 2316/2021 under Order XXIII Rule 3 of CPC, to record the said settlement arrived at between them. And by impugned Order dated 15th March, 2022, the learned Single Judge allowed I.A. No. 2316/2021 and accordingly, the underlying suit being CS(OS) 1210/2013 was decreed in terms of the Settlement Agreement dated 25th January, 2021. All the pending applications were also disposed of by the said order.

3.6. It is stated that being aggrieved by the impugned order dated 15th March, 2022, the Appellant(s) filed an interlocutory application⁴ under

² CS(OS) 1210/2013 titled as ***Janak Properties Private Limited & Anr. v. Amarjeet Singh***

³ I.A. No. 4391/2021

⁴ IA No. 5902/2022



Section 151 read with Order IX Rule 13 of CPC, thereby seeking recall of the order dated 15th March, 2022.

3.7. It is stated that during the pendency of the aforesaid application, the original applicant-Mrs. Urmila Vohra passed away and, therefore, her legal heir filed I.A. No. 7945/2023 under Order XXII Rules 2 and 3 of CPC for bringing on record her legal heirs.

3.8. It is stated that thus, the Appellants were pursuing I.A. Nos. 7945/2023, 4391/2021 and 5902/2022.

3.9. It is stated that the said three interlocutory applications have been dismissed by the learned Single Judge *vide* impugned judgment dated 07th May, 2024.

3.10. The impleadment application being I.A. No. 4391/2021 was dismissed on the basis that *vide* earlier order dated 15th March, 2022, all the pending applications were disposed of.

3.11. The subsequent application bearing I.A. No. 7945/2023 filed by legal heirs of Smt. Urmila Vohra seeking decision on the said impleadment application (i.e. I.A. No. 4391/2021), was not tenable as it had already been disposed of *vide* Order dated 15th March, 2022.

3.12. Furthermore, I.A. No. 5902/2022 was dismissed on the basis that the Appellant(s) never became a party to the underlying suit and therefore, the applicant had no locus standi to move an application under Order IX Rule 13 of CPC for setting aside the decree to which applicant was not even a party. The learned Single Judge held that Respondent No. 2 would stand substituted in place of Respondent No. 1, being a subsequent purchaser having stepped in the shoes of the Respondent No. 1.



4. Aggrieved by the impugned judgment dated 07th May, 2024 and impugned order dated 15th March, 2022, the Appellant(s) herein, have preferred the present appeal.

5. Learned counsel for the Appellant states that the learned Single Judge failed to consider the order dated 16th February, 2021 passed in the underlying suit wherein the Court had observed that both CS(OS) 1210/2013 and CS(OS) 325/2017 have to be taken up by the same Court to avoid conflict of opinion. He states that, therefore, I.A. No. 2316/2021 could not have been taken up subsequently, on 15th March, 2022 in the absence of the Appellant herein.

5.1. He states that the observation of the learned Single Judge at paragraph 22 of the impugned judgment dated 7th May, 2024 to the effect that Respondent No. 2 would be substituted in place of Respondent No. 1, having stepped into the shoes of Respondent No. 1 is hit by doctrine of privity of contract. Since the ATS cannot be enforced against a person who was not a party to it.

5.2. He states that Respondent Nos. 1 and 2 played a fraud on the predecessor Bench, which decreed the underlying suit on 15th March, 2022, as the said Bench was not apprised about the tagging of CS(OS) No. 325/2017 along with the underlying suit. He states that the Appellant's application being I.A. No. 4391/2021, seeking impleadment was pending and the same was not brought to the attention of the Bench passing the order dated 15th March, 2022.

5.3. He states that lastly, this Court may consider injunction Respondent No. 2 from further dealing with the subject property so as to prevent creation of third-party interest.



6. We have heard the learned counsel for the Appellant and perused the record.

7. We may note, at the outset, that in the Appellant's own suit i.e. CS(OS) 325/2017, his application filed under Order XXXIX Rules 1 and 2 of CPC was dismissed by a detailed order dated 23rd August, 2018, after the Court concluded that the Appellant herein is, *prima facie*, not ready and willing to perform the ATS. The operative portion of the said order reads as under: -

"13. Learned counsel for the defendant has stated that de hors this controversy the defendant can execute a deed in favour of the plaintiff. He has further offered that appropriate conveyance deed can be executed in favour of the plaintiffs and he is ready and willing to have the conveyance deed executed provided the balance sale consideration is paid by the plaintiffs, namely, a sum of Rs.3.61 crores less a sum of Rs.1.54 crores already received by the defendants. It has further been stated that in case the plaintiffs have paid Rs.78.20 lakhs to their friends in lieu of repayment of the loan given to the defendants, the said amount may be added to the consideration received by the defendants. In the alternative, he submits that he is ready and willing to refund the entire sum of Rs.1.54 cores and Rs.72.80 lakhs in case payment has been made to the friends by the plaintiffs back. He has further pleaded that another way forward would be for the defendants No.2 and 3 to transfer their entire shareholding in defendant No.1 in favour of the plaintiff which would also enable control over defendant No.1 company who owns the property.

14. I may note that in response to this offer learned counsel for the plaintiff was unable to take any stand. There was no denial of the fact that the defendant can execute the necessary conveyance deed in favour of the plaintiff or transfer the shares of the company defendant No.1 in favour of the plaintiff.

15. What follows from the above is that the defendant has made a fair offer to the plaintiff to either complete the transaction on payment of the balance unpaid sale consideration, On receipt of this balance consideration the defendant is ready to transfer the property in favour of the plaintiff in terms of the agreement. An alternative offer is made that the defendant is ready to refund to the plaintiff the entire advance received.

16. Keeping in view the above, in my opinion, the plaintiffs have failed to make out a prima facie case. From the stand of the defendant, it is clear that the defendant has shown that he is ready and willing to perform his part of contract. However, the facts as noted above show



that prima facie the plaintiff is not ready and willing to perform his part of contract.

17. It is clear that the plaintiffs have failed to make out any case for grant of injunction. Balance of convenience is not in favour of the plaintiffs. Accordingly, I dismiss IA No. 7955/2017 and allow IA No. 14248/2017. The interim order of this court dated 19.07.2017 stands vacated.

18. However, in the interest of justice, I extend the interim order for a period of two months from today. It is left open to the plaintiffs to choose any of the two options given by the defendants, namely, to take back the payments made to the defendants i.e. Rs.1.54 crores plus Rs.72.80 lakhs on showing proper original receipts from the friends of the plaintiffs being a total of Rs.2,26,80,000/-. In the alternative, the plaintiffs may pay the balance sale consideration as agreed upon in the Agreement to Sell dated 24.01.2013 and addendum dated 19.7.2014 subject to the defendants executing the necessary conveyance deed in favour of the plaintiff. Any other relief that the plaintiff wishes to press can be left open for adjudication in the main suit. In case, the plaintiffs choose any one of these two options, liberty is granted to the plaintiffs to move an appropriate application to the said effect.

19. The applications stand disposed of.”

(Emphasis Supplied)

8. The aforesaid order has admittedly attained finality and the Appellant has elected not to file any appeal against the aforesaid order and the Appellant did not avail the leave also reserved to him at para 18 of the aforesaid order.

9. The submission of the Appellant that the learned Single Judge, who decreed the underlying suit on 15th March, 2022, was not aware of the pendency of CS(OS) 325/2017 is contrary to the record as the mediation settlement which is a detailed agreement extensively records the factum of the pendency of the CS(OS) 325/2017 and the ATS dated 24th January, 2013 as well as the Addendum dated 19th July, 2014 executed between the Appellants and Respondent No. 1.



10. In view of the fact that there was no interim injunction or restraint against Respondent No. 1 in CS(OS) 325/2017, there was no bar in law against Respondent No. 1 from entering into the Settlement Agreement dated 25th January, 2021 before the Mediation Centre with Respondent No. 2 and, therefore, the impugned order dated 15th March, 2022 passed by the predecessor Bench in the underlying suit decreeing CS(OS) 1210/2013 in terms of the Settlement Agreement dated 25th January, 2021 does not suffer from any error.

11. We are in agreement with the finding of the learned Single Judge in the impugned judgment dated 7th May, 2024 that Respondent No. 2 herein had stepped into the shoes of Respondent No. 1, being a subsequent purchaser; and the Appellant herein will be entitled to enforce the ATS and Addendum against Respondent No. 1 as per Section 19 (b) of the Specific Relief Act, 1963, if they succeed in CS(OS) 325/2017. Therefore, the dismissal of I.A. No. 5902/2022 filed by the Appellant under Order IX Rule 13 of CPC, by the learned Single Judge is correct and merits no interference by this Court.

12. Since, CS(OS) 1210/2013 stood disposed of *vide* order dated 15th March, 2022, I.A. No. 4391/2021 filed previously by the Appellants predecessor also stood disposed of; and, therefore, the order of the learned Single Judge recording the said fact and dismissing I.A. No. 7945/2023 for being substituted as the legal representative of the Applicant in I.A. No. 4391/2021 has been rightly dismissed.

13. The last submission of the Appellants that Respondent No. 2 be enjoined from creating third-party interest in the subject property is without any merit. The Appellants in their own substantive suit i.e. CS(OS)



325/2017 have suffered a dismissal of their application filed under Order XXXIX Rules 1 and 2 of CPC vide order dated 23rd August 2018 which has attained finality. The Appellants cannot overreach the effect of the said order by seeking an injunction in this appeal arising from the disposed of CS(OS) 1210/2013.

14. We, , find no merits in the present appeal impugning the judgment dated 7th May, 2024 and the order and decree dated 15th March, 2022. Accordingly, the present appeal along with application stands dismissed .

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 28, 2024/mr/MG