

12.12.2025
Ct. No. 06
Sl. No.14
skg

C.O. No. 4096 of 2025

Jindal Pipes Limited
Vs.
West Bengal Housing Infrastructure Development
Corporation Limited

Mr. Saptangshu Basu, Sr. Adv.
Mr. Probal Mukherjee,
Mr. Suhrid Sur,

.....for the petitioner

1. This revisional application arises out of Order No.37 dated August 30, 2024, passed by the learned Judge, Commercial Court at Rajarhat, North 24 Parganas in Title Suit (Commercial) No. 14 of 2024.
2. By the order impugned the learned court rejected the application under Order 7 Rule 11 of the Code of Civil Procedure which was filed by the petitioner.
3. According to Mr. Basu, learned Senior advocate for the petitioner, the suit is not maintainable and the plaint should be rejected. The elements of fraud have not been pleaded with specific instances. Elements of fraud must be established through averments. The fact that the petitioner is not being able to construct upon the land allotted by the plaintiff, cannot be an element of fraud. The deed of conveyance was not drafted by the petitioner, but by the plaintiff, and as such the allegation of deletion of some mandatory conditions

with regard to construction of a commercial structure on the said land, could not be at the instance of the petitioner. It is also urged before the court that, the suit will ultimately fail and relegating the petitioner to a long and expensive adjudicatory process, when the failure of the suit is inevitable, is not in consonance with the principles of just and fair trial. The plaint, as it stands, does not have any chance of success and the suit should be nipped at the bud. Whether the reliefs could be granted or not, should have been the primary consideration by the learned court, while deciding the application. The plaint did not disclose any cause of action. The claims were time barred. The dispute was not a commercial dispute as per the definition of a commercial dispute under the law. A suit for cancellation of a deed of sale, is not a suit pertaining to an agreement in respect of an immovable property used exclusively for commercial purpose. Moreover, the suit should fail on the ground of limitation. A deed of 2011 was sought to be cancelled in 2018.

4. Heard Mr. Basu. Perused the grounds taken to justify rejection of the plaint.
5. The petitioner, as the defendant in the suit, filed an application under Order 7 Rule 11 of the Code of Civil Procedure, in the sixth year of the suit. In the said application, the petitioner contended that, the plaintiff had wrongly stated that there was an agreement to

transfer the land in question. The contention of the plaintiff that the petitioner had acquired a limited right in respect of the property was incorrect. The conditions applicable in respect of the conveyance were non-existent. The reference by the plaintiff to the allotment offer no. M-557/HIDCO/Adnubu 1425/2010 dated 10/02/2011, was wholly misplaced. The unilateral decision of the board of directors of the plaintiff, could not be regarded as a legally binding and an enforceable contract between the parties. It was further contended that the unilateral decision of imposition of penalty by the plaintiff after expiry of three years, was illegal. The allegation of the plaintiff that the defendant had not constructed on the land for the purpose for which the land was allotted, was also erroneous. The defendant had already constructed a boundary wall. In paragraph 16 of the application there was a mention that, the dispute was not a commercial one and that such issue was discussed with the learned court, and the court apparently agreed with the petitioner.

6. The learned Court found that the grounds taken in the application for rejection of the plaint did not fulfil the ingredients of Order 7 Rule 11 of the Code of Civil Procedure. The court held that the averments in the plaint were to be taken as true and correct and all that the court was required to see was, whether the prayers

could be granted upon a meaningful reading of the plaint.

7. In the instant case, the defendant raised several objections, which have been discussed hereinabove. The objections do not in any way indicate that they are valid grounds for rejection of the plaint. The objections are on the merits of the suit.
8. The plaint case in a nutshell is as follows :-
 - a) The plaintiff granted allotment of 1.699 acres of land in favour of the defendant for construction of a commercial building complex to be used exclusively by the defendant.
 - b) The user of the properties was restricted.
 - c) The Letter of Allotment stipulated a time period within which the building plan was to be submitted and the construction as per the building plan was to be completed. Such requirements were mandatory in nature.
 - d) The defendant accepted the said terms and conditions and as such, there was a binding contract between the parties.
 - e) The conveyance deed was executed and registered on July 2, 2011, by handing over possession of the land in question.
 - f) Had the defendant not accepted the clause i.e. to construct a commercial complex within stipulated

time, the plaintiff would not have conveyed the property to the defendant.

g) On account of failure to comply with the terms and conditions, the defendant was liable to be imposed with heavy penalty. The conditions were imposed in the deed of conveyance to ensure beneficial utilisation of the properties in Newtown, for public interest.

h) The penalty was decided to be imposed on yearly basis on the resolution/policy decision adopted by the Board of directors of the plaintiff. The defendant was duly made aware of such penalty, but there was default in payment of the same.

i) Several reminders were issued, but the defendant refused to pay. The defendant had acquired a limited right in the said land.

j) The project was to be completed within 5 years from taking possession thereof, which was not done and as such, penalty was imposed.

k) The defendant by fraudulent misrepresentation had got the property conveyed, but it was later discovered that, the defendant had not taken any action to utilise the said plot in spite of registration thereof.

9. The prayers were as follows :-

“a) Declaration that the Indenture of Sale dated 2nd July, 2011 is illegal null and void or in the alternative declaration that the said Indenture of Sale dated 2nd July, 2011 incorporates by reference the terms of the letter of allotment dated, 10th February, 2011;

- b) Indenture of Sale dated 2nd July, 2011 be adjudged, void, delivered up and cancelled;*
- c) In the alternative of prayers (a) and (b) above, a decree for rectification of the Indenture of Sale dated 2nd July, 2011 by incorporating therein the terms agreed to between the parties;*
- d) Declaration that the defendant has not acquired any right in respect of the said land more fully described in Annexure "A" hereto beyond what is stipulated in the letter of allotment dated 10th February, 2011;*
- e) Decree for recovery of vacant and khas possession of the said land more fully described in the schedule being Annexure "A" hereto and in the alternative decree for **Rs. 2,74,73,578/- (Rupees Two Crores Seventy Four Lakh Seventy Three Thousand Hundred Seventy Eight) + 18% G.S.T. for penalty at the rate of 10% of the said land price for each year delay in completion of the construction commencing from 22nd September, 2016 to till January, 2018 along with interest at the rate of 18% per annum and further penalty as would be due.***
- f) Interim interest and interest on judgment at the rate of 18% per annum;*
- g) Receiver;*
- h) Injunction;*
- i) Costs;*
- j) Further or other reliefs."*

10. The issues raised are triable. At the first blush the reliefs cannot be said to be time barred. Secondly, Mr. Basu urges that the way fraud has been pleaded, the same can never be proved. I find from the application under Order 7 Rule 11 of the Code of Civil Procedure, the objection was not even remotely mentioned. Fraud has been pleaded in paragraph 17 of the plaint. With regard to non-consideration of the issue as to whether

the dispute is commercial or not, this court finds that the suit was earlier filed before the civil court which was transferred to the commercial court. At that stage no such objection was raised by the defendant.

11. Thus, the plaint read as a whole does not indicate that, the same does not disclose any cause of action. The issue of limitation is a mixed question.

12. The revisional application is accordingly dismissed. The learned court shall proceed in accordance with law.

13. There shall be no order as to costs.

14. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)