

(2006) 12 DEL CK 0020

Delhi High Court

Case No: I.A. No. 4574 of 2006 in C.S. (OS) No 679 of 2006

Kishan Lal

APPELLANT

Vs

DSIDC and Another

RESPONDENT

Date of Decision: Dec. 4, 2006

Citation: (2007) 93 DRJ 375

Hon'ble Judges: Pradeep Nandrajog, J

Bench: Single Bench

Advocate: Sandeep Sethi and Jinender Jain, for the Appellant; Anusuya Salwan, Monica Sharma for defendant No. 1 and Siddharth Yadav, for Defendant No. 2, for the Respondent

Judgement

Pradeep Nandrajog, J.

The present order disposes of IA No. 4574/2006. plaintiff seeks an injunction, pending disposal of the suit, restraining DSIDC from allotting shed No. A-13, DSIDC Industrial Area Complex, Rohtak Road, Nangloi, New Delhi to defendant No. 2.

2. Case pleaded by the plaintiff is that in January 2004, DSIDC invited tenders for sale of the shed in question fixing reserve price of Rs. 43.5 lacs. plaintiff made, an offer by filling up the tender and agreed to purchase the shed for Rs. 55.01 lacs. As required by the terms of the notice inviting tender, earnest money of Rs. 1 lac was deposited along with the offer.

3. But, before he submitted the tender, plaintiff states that in the office of DSIDC, he met Anil Arora, husband of defendant No. 2 who persuaded plaintiff to join his wife as a co-applicant. Therefore, plaintiff included name of defendant No. 2 as a co-applicant.

4. plaintiff further states that on 9.2.2004, DSIDC intimated acceptance of the offer made and required further deposit to be made equal to 25% of the offer amount. Thereafter, he i.e. plaintiff and defendant No. 2 deposited balance sum to make up 25% of the offer amount.

5. That in March 2004, Anil Arora contacted the plaintiff and stated that he wanted to take the shed to the exclusion of the plaintiff. He told the plaintiff that he had links with the chief minister and in case the plaintiff refused, he would ruin the business and the family of the plaintiff. plaintiff succumbed to the pressures exercised by Anil Arora and signed an affidavit and documents prepared by Anil Arora. That at the time when he signed the documents he was promised that besides return of the earnest money paid to DSIDC, he, i.e. plaintiff would be paid another Rs. 10 lacs.

6. That, thereafter since husband of defendant No. 2 did not pay Rs. 10 lacs to him, vide letter dated 16.4.2004, plaintiff intimated DSIDC not to act on his earlier communications.

7. It is stated that fearing that DSIDC would make allotment in favour of defendant No. 2, plaintiff filed WP(C) No. 7873/2004. During course of proceedings in the said writ petition, defendant No. 2 filed an agreement dated 27.2.2004 which showed interpolations.

8. That vide order dated 20.4.2006, the writ petition was disposed of holding that disputed questions of fact pertaining to the agreement dated 27.2.2004 arose for consideration. plaintiff was relegated to the remedy of a civil proceedings. Thus, present suit was filed praying that direction be issued to DSIDC to make allotment of the shed in question in the joint names of plaintiff and defendant No. 2 and to give joint possession.

9. In the written statement, defendant No. 2 states that plaintiff and defendant No. 2 jointly applied for allotment. That when offer was accepted and 25% of the bid amount had to be deposited, plaintiff expressed his inability to pay his half share. Further, amount of Rs. 13 lacs had to be deposited. Defendant No. 2 deposited the said sum. That plaintiff agreed that DSIDC should make allotment in the sole name of defendant No. 2 and as a consideration received back the earnest money which he had deposited. Vide cheque No. 513139 dated 27.2.2004, plaintiff received the sum of Rs. 1 lac. But he insisted that he would like to have the payment in cash and therefore he returned the cheque and took Rs. 1 lac in cash.

10. Defendant No. 2 asserts that the plaintiff executed the agreement dated 27.2.2004 fully conscious, of his rights.

11. In the replication filed, plaintiff has reiterated his stand pleaded in the plaint. To non suit the defendant No. 2 on the plea that plaintiff did not have money to contribute his 50% share when 25% offer amount had to be deposited, it is pleaded that plaintiff had paid Rs. 12 lacs to husband of defendant No. 2. The said payment was made on 27.2.2004 when husband of defendant No. 2 agreed to sell the shed No. C-25, DSIDC Industrial Area Complex, Rohtak Road, Nangloi, New Delhi to the plaintiff.

12. I would be briefly noting that arguments urged and the documents relied upon for the reason I am dealing with an injunction application and am not to record conclusive findings of facts which would be recorded after evidence is led by respective parties.

13. Needless to state, opinion expressed in the present order is prima facie opinion.

14. Order dated 20.4.2006 in WP(C) No. 7873/2004, which preceded the present suit, reads as under:

The dispute raised in this Petition is basically inter se two private parties, namely, Shri Kishal Lal and Ms. Shalini Arora. It appears that the Husband of Ms. Shalini Arora and the petitioner had been in business together. An Agreement to Sell and Purchase dated 27.2.2004 pertaining to C-25, DSIDC, Rohtak Road, Nangloi, Delhi-110 041, photocopy of which is Annexure P-9, is not in dispute. However, an Agreement of the very same date pertaining to A-13, Rohtak Road, DSIDC Industrial Complex, Nangloi, Delhi-110 041 is in dispute inasmuch as the petitioner contends that there has been some interpolation in the figures viz. the original Rs. 10,00,000/- has been reduced to 1,00,000/- in the last paragraph of the first page of the Agreement. The original has been filed in these proceedings by respondent No. 2.

The DSIDC, which is the only Authority involved in this litigation, has till date not taken any decision in the matter.

In the circumstances of such highly debatable questions of fact, involving inter alia the change in an Agreement, exercise of writ jurisdiction would be wholly inappropriate.

Learned Counsel for the petitioner states that the DSIDC has taken the stand that the letter whereby the petitioner had requested the deletion of his name has been acted upon. Even if that is so, these are matters which must be adjudicated in ordinary civil proceedings.

Interim orders are recalled. Petition is disposed of with liberty to take any other appropriate action. The Agreement shall be kept in a sealed cover.

15. The interpolation noted are as under:

(a) The words "the aforesaid earnest" in the 5th line of the last para of the first page of the agreement have been written after applying fluid over the original text.

(b) The figure "01", and the word "one" in the next line of the same para have been re-written by applying fluid over the original text. The result is that sum referable becomes Rs. 1 lac.

(c) On the first paragraph at page 2 of the agreement, the words "according to present deed of agreement regarding surrender of ownership rights with mutual understanding with first party as per terms mentioned herein has received of have

been re-written after applying fluid over the existing text.

16. It would be relevant to note that neither party has initialled the said corrections.

17. With the help of a table lamp by focusing a powerful light on the original agreement it is evident to the naked eye, an exercise which was conducted in presence of learned Counsel for the parties in Court, that on the first page, last para of the agreement, original words typed were "a sale consideration" which after applying fluid were erased and were replaced with the words "the aforesaid earnest". Further, Rs. 10 lacs has been converted to Rs. 1 lac.

18. Originally typed, the last paragraph of page 1 of the agreement reads as under:

AND WHEREAS now the second party with his own will, wish and without any pressure/force from any side, had withdrawn his share/relinquished his 1/2 undivided share in the above-said industrial shed No. A-13, DSIDC Industrial Area Complex, Rohtak Road, Nangloi, New Delhi-41 in favour of first party, for which a sale consideration amount of Rs. 10,00,000/- (Rupees Ten lacs only) has been settled, payable by the first party to the second party, on the following agreed terms and conditions of this agreement/

19. Unfortunately, we were unsuccessful in deciphering what was originally transcribed in para 1 of page 2 of the agreement. However, where the words "regarding surrender of ownership rights" are written in the second line of para 1, the following could be read "Rs. 10,00,000/- (Rupees Ten lacs only)".

20. Prima facie case is accordingly made out. Needless to state that on balance of convenience and irreparable loss and injury, the suit property has to be preserved.

21. But noting the fact that admittedly balance 75% of the sale amount has been paid to DSIDC by defendant No. 2 and that DSIDC has to handover possession of the shed in question and if shed is not taken into custody by some party, it may be trespassed upon, I dispose of IA No. 4574/2006 by appointing defendant No. 2 as the receiver of shed No. A-13, DSIDC Industrial Area Complex, Rohtak Road, Nangloi, New Delhi.

22. I direct DSIDC to handover possession of the shed No. A-13, DSIDC Industrial Area Complex, Rohtak Road, Nangloi, New Delhi to defendant No. 2 who would retain custody thereof as a receiver.

23. But, no conveyance deed would be executed by DSIDC till disposal of the suit.

24. However, defendant No. 2, as receiver, can find a person who would be willing to take, as a licensee, the shed in question. The report may be filed by defendant No. 2 to said effect so that necessary orders may be passed by the Court. This would ensure that the property fetches some income.

25. No costs.