

## Mrs. Butna Devi Vs Mr. Amit Talwar and Others

**Court:** Delhi High Court

**Date of Decision:** Aug. 20, 2009

**Acts Referred:** Civil Procedure Code, 1908 (CPC) – Order 12 Rule 6, Order 7 Rule 11, 151

**Hon'ble Judges:** Manmohan Singh, J

**Bench:** Single Bench

**Advocate:** R.M. Sinha, for the Appellant; D.K. Aggarwal and Raghwendra Kumar Dwivedi, for the Respondent

**Final Decision:** Dismissed

### Judgement

Manmohan Singh, J.

By this order I shall dispose of the application filed by the plaintiff under Order XII Rule 6 read with Section 151

CPC being I.A. No. 14741/07 praying that this Court may pass a decree declaring the sale deed dated 4th August 2006 executed by the plaintiff

in favour of the defendant No. 1 as null and void or in the alternative for return of cheque amount with damages of Rs. 5 lac.

2. The brief facts are that the plaintiff is the exclusive owner and in possession of the property comprising of entire first floor with servant quarter on

property No. R-563, New Rajinder Nagar, New Delhi on land measuring about 200 sq.yd. The plaintiff and defendant entered into an agreement

to sell on 2nd May 2006 for total consideration of Rs. 73.50 lac. The defendant paid Rs. 7,25,000/- as part consideration. The balance amount of

Rs. 66.25 lac was to be paid on the date of execution of the sale deed. The sale deed was executed with the office of Sub Registrar, Asaf Ali

Road, Delhi on 4th August 2006 wherein the balance consideration of Rs. 66.25 lac was shown to have been paid before the Sub Registrar in the

following manner:

(i) A sum of Rs. 35,36,751/- was paid to the plaintiff by defendant No. 1 in cash against acknowledgement till the execution of sale deed.

(ii) A banker's cheque bearing No. 186931 dated 3rd August 2006 amount to Rs. 30,88,249/- drawn on City Bank (Financial) Pushp Vihar,

New Delhi was handed over to the plaintiff before the Sub Registrar.

3. The sale deed was executed and got registered before the Sub Registrar, Asaf Ali Road, Delhi showing the total consideration of the suit

property to be as Rs. 35 lac i.e. cash amount of Rs. 4,11,751/- and a banker's cheque amounting to Rs. 30,88,249/-. The sale deed dated 4th

August 2006 superseded the agreement to sell dated 2nd May 2008 and the receipt dated 13th April 2006 executed by the parties.

4. The contention of the plaintiff is that after fulfilling the entire formalities, the plaintiff was told that there was a typing error in cheque as in place of

the name of the plaintiff being Smt. Butna Devi, the words Smt. Bhutani Devi, was typed. The plaintiff was assured that the correct banker's

cheque would be handed over to her within a day. In view of the said assurance, the plaintiff retained the actual physical possession of the suit

property with her and the same was not handed over to defendant No. 1 for the time being. It is stated in the plaint that till the filing of the suit, no

banker's cheque for a sum of Rs. 30,88,249/- was delivered to the plaintiff, therefore, the present suit has been filed.

5. In the present application, the plaintiff has sought a decree on the basis of the admission made by the defendant in the written statement as well

as the order passed by this Court and the affidavit filed by the bank. It is prayed that the sale deed dated 4th August 2006 is to be declared as null

and void because all the facts stated in the sale deed have been proved to be wrong.

6. The application is opposed by the defendant who has not denied the mode of payment as well as the execution of the sale deed between the

parties and consideration thereof. It is stated by the defendant that after the execution of the registration of sale deed, the plaintiff has voluntarily

delivered the said cheque to the authorised representative of the bank for removal of certain clerical corrections to enable her to deliver the papers

including those relating to mutation etc to complete the formalities. Since the plaintiff did not complete the formalities, the defendant bank refused to

deliver back the banker's cheque to the plaintiff. The defendant has also claimed that the constructive and physical possession of the property

remained with the plaintiff.

7. According to the defendant, the sale deed remain to be completed as the banker's cheque was delivered before the Sub Registrar and sent to

the plaintiff for receipt of consideration and only thereafter the process of registration was to commence and concluded. Defendant No. 1 states

that he was not aware about the return of the banker's cheque by the plaintiff. In any case the defendant No. 1 throughout was willing to pay the

said amount.

8. The contention of the defendant is that in fact it is a case of collusion between the plaintiff and the authorised representative of the bank to

manipulate ground to wriggle out of the sale transaction and as such there was neither any demand nor the plaintiff was entitled for any decree as

prayed for and the suit is otherwise liable to be dismissed. Learned Counsel for the defendant has argued that the plaintiff is liable to be rejected

under Order 7 Rule 11 CPC as there is no cause of action in favour of the plaintiff. He states that admittedly the substantial amount has been paid

to the plaintiff and the plaintiff is also enjoying the property after execution of the sale deed in favour of defendants. The counsel has also referred

to the written statement in which it is stated that the plaintiff is also not willing to receive the balance consideration against the said banker's cheque

from the defendant, therefore, the question of cancellation of sale deed does not arise. In fact the plaintiff has made a concocted story to defeat the

said transaction. It is further contended by the learned Counsel for the defendant that there is no fault on the part of the defendant as at the time of

execution of the sale deed, the plaintiff was given banker's cheque and thereafter the sale deed was executed.

9. After hearing learned Counsel for the parties and having gone through the respective pleadings of the parties, it appears that there is no specific

and clear admission made by the defendant in the written statement for cancellation of the sale deed nor any positive statement has been made in

this regard. Rather, the plaintiff has admittedly taken the substantial amount of sale consideration of the property as well as having the possession of

the property. Prima facie, no case under Order XII Rule 6 has been made out as this Court is of the considered view that this matter requires trial

and it can not be decided in the facts and circumstances of the matter.

10. It is well settled that a judgment on admissions by defendant under Order XII Rule 6 CPC is a matter of discretion and not a matter of right

and where a case involves question of facts and law which cannot be conveniently disposed of on motion under the rule, the Court may in exercise

of the discretion refuse the motion.

11. There is no admission, lest absolute unequivocal, unambiguous admission by the defendant. Therefore, this Court cannot exercise its discretion

in favour of the plaintiff.

12. In the case of Sneh Vasih and Another Vs. Filatex India Ltd., it was held as under:

There has to be an admission of fact made in pleadings or otherwise and if such admissions have been made the court at any stage may pronounce

a judgment in that regard. This clearly reveals that firstly admissions have to be of facts. Admission must be clear and unambiguous. No admissions

are required obviously with respect to questions of law which can always be gone into. And second important aspect of Order 12 Rule 6, CPC is

that it is not mandatory for the court to act and pass a judgment because facts and circumstances of each case have to be taken note of.

13. The application is, therefore, liable to be dismissed under these circumstances. It is ordered accordingly. No costs.

C.S. [OS] No.1687/2006

List on 7th October, 2009.