

(2009) 01 DEL CK 0232

Delhi High Court

Case No: FAO (OS) 19 of 2009

Vinod Seth

APPELLANT

Vs

Devinder Bajaj and Another

RESPONDENT

Date of Decision: Jan. 27, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 25 Rule 1, Order 39 Rule 2(2), Order 7 Rule 11, 9
- Transfer of Property Act, 1882 - Section 52

Hon'ble Judges: Sudershan Kumar Misra, J; Sanjay Kishan Kaul, J

Bench: Division Bench

Advocate: H.C. Mittal, for the Appellant;

Final Decision: Disposed Off

Judgement

FAO (OS) No. 19/2009

1. The appellant has filed a suit for specific performance of an oral agreement of collaboration in respect of property of the respondent located at A-1/365, Paschim Vihar, New Delhi. The appellant claims to have paid a sum of Rs. 51,000/- in cash against a receipt signed by the first defendant. No agreement has been executed in writing.

2. It is the case of the appellant that there was an oral understanding, the terms of which have been reproduced in the plaint. The learned Single Judge in terms of the impugned order dated 2.12.2008 has examined the pleadings at the stage of framing of issues and has noticed that the nature of understanding between the parties is what is known in common parlance as a collaboration agreement for development of the property which requires detailed terms and conditions to be mentioned.

3. The appellant filed the suit without claiming any interim relief. The learned Single Judge as per the impugned order has noticed that though no interim relief is prayed for, in view of the provisions of Section 52 of the Transfer of Property Act, 1882, the rule of lis pendens would apply which in a sense casts a cloud on the property in question. The learned Single Judge was conscious of the fact that the suit cannot be dismissed at the threshold, and that a trial has to take place and considered it appropriate that the appellant should file an affidavit/undertaking to the court that in the event of his not succeeding in that suit, a sum of Rs. 25 lacs by way of damages would be payable to the respondents. This figure has not come out of the blue but is based on the averment in the plaint that the appellant was to spend Rs. 20 lacs on the development of the property and in lieu thereof was to become the owner of the ground floor of the newly constructed property.

4. Learned Counsel for the appellant submits that there is no mandate in law which permits the learned Single Judge to put such a condition and that every party has an inherent right to bring a civil suit. Learned Counsel has referred to the judgment of the Supreme Court in [Abdul Gafur and Another Vs. State of Uttarakhand and Others](#), where it has been held that in view of Section 9 of the Code of Civil Procedure, 1908, the law confers inherent right to bring a suit of civil nature of one's choice, "at one's peril", howsoever frivolous the claim may be unless it is barred by a statute or Order 7 Rule 11 of the CPC which permits rejection of a plaint on the grounds set out therein.

5. We see no contradiction in the aforesaid judgment and the impugned order. The learned Single Judge has not dismissed the suit. We also note the observations of the Supreme Court that even a frivolous suit can be brought before the court "at one's peril". All that the learned Single Judge has done at the stage of framing of issues, having prima facie found not much merit in the case of the appellant, considered it appropriate to impose certain terms and conditions.

6. We may notice that the provisions of Order 39 of the said Code deals with temporary injunction and interlocutory orders. Order 39 Rule 2(2) authorizes the court to grant injunction on such terms as deems proper including giving of security. Thus, when the prayer for interim relief has to be granted, provision has been specifically made authorizing the court to make orders for keeping accounts, giving security or otherwise as the court thinks fit. The appellant has conveniently not filed an interim application to avoid the rigour of such an order. Normally in a suit for specific performance and that too dealing with an immovable property, a party would seek interim protection. The appellant has not done so. It is an ingenious method of keeping a suit alive without claiming interlocutory relief and creating a cloud over a property in view of the provisions of Section 52 of Transfer of Property Act.

7. We do think that the courts cannot look helplessly at such tactics and ignore the problem of huge docket, which arises on account of meritless claims being filed. The

heavy docket does not permit early disposal of suits and thus parties may take advantage of keeping frivolous claims alive. We also cannot ignore the ground realities of the market which would persuade third parties to eschew dealing with such a property over which there is a cloud during the pendency of the suit. It is this cloud of which the appellant can take advantage of to extract some money in case the relief is frivolous.

8. We also find that the appellant really cannot have any grievance since a condition has not been imposed to deposit any amount which would make the appellant be out of pocket. The condition is of a much lesser level of only an undertaking to compensate the respondent in case of failure in the suit and as the learned Single Judge has rightly observed that a party coming to court should reasonably be confident of the genuineness of its case. The figure of Rs. 20 lakhs is based on the claim of the appellant as noticed by learned Single Judge. We may also add that Order XXV Rule 1 of the CPC gives power to the Court including suo moto power for the plaintiff to give security for payment of all costs incurred and likely to be incurred by the defendant. However, reasons for such an order are to be recorded. The costs include not only what is spent in the litigation but also the effect of the continuation of the suit on the plaintiff and, thus, as per the impugned order, for reasons recorded, the learned Single Judge has passed the order.

9. We find that the course adopted by the learned Single Judge is not without sanction of law and there is merit in this approach looking to the ground realities mentioned aforesaid.

10. Dismissed.

CM No. 1175/2009(Stay)

11. Since the appeal has been disposed of today, this application does not survive and dispose of as infructuous.