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(1996) 2 AD 625 : (1996) 63 DLT 52

Delhi High Court

Case No: Interim Application No. 9562 of 1995 and Suit No. 2320 of 1995

Aggarwal Hotels (P) Ltd.	APPELLANT
Vs	
Focus Properties (P) Ltd.	RESPONDENT

Date of Decision: May 6, 1996

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 39 Rule 1#Specific Relief Act, 1963 â€" Section 16

Citation: (1996) 2 AD 625 : (1996) 63 DLT 52

Hon'ble Judges: S.K. Mahajan, J

Bench: Single Bench

Advocate: Mukul Rohatagi, Ravi Gupta, Arun Jaitley, Vikash Dhawan and K. Jaiswal, for the Appellant;

Judgement

S.K. Mahajan, J.

(1) The plaintiff company has filed this suit for specific performance of the agreement to sell dated 17th June, 1995 whereby the defendants had

alleged to have agreed to transfer the defendant No. 1 company Along with its assets in favor of the plaintiffs. It is alleged that only asset of the

defendant company is the land measuring 13 bighas and 2 bids was in Village Bijwasan, Tehsil Mehrauli, New Delhi and defendants 2 and 3 were

holding the total equity capital of defendant No. 1 company. One Shri S.P. Aggarwal is stated to have negotiated on behalf of the plaintiff with

defendant No. 2 for sale of the shares of defendant No. I company and a concluded contract is alleged to have been arrived at between the parties

whereby the price of Rs. 34 lakhs was fixed for transfer of shares of defendant No. 1 company. A sum of Rs. 1 lakh is stated to have been paid

by the plaintiff in cash to defendant No. 2 and a receipt was executed by the said defendant in his own hand and it was agreed that a formal

agreement as required under the Income Tax Act would be executed and submitted u/s 269 of the Income Tax Act. Thereafter it appears that the

deal could not come through inspire of the plaintiff being allegedly always ready and willing to perform its part of the obligations and having sent all

necessary documents to the defendants for completing the transaction, which resulted in the plaintiff filing the present suit for specific performance

of the said agreement to sell.

(2) Along with the suit an application for ad in terim order of injunction was filed alleging that defendants were contemplating to sell the property in

favor of one Mr. Deepak Kaicker and they had also applied for grant of no objection certificate from the revenue authorities for the same. This

Court vide orders dated October 11, 1995 had restrained the defendants from executing the sale deed in favor of the said Mr. Deepak Kaicker.

(3) The defendants instead of filing the written statement have filed separate replies to the application for stay and have denied the allegations made

in the plaint. It is denied that there was any agreement to sell between the parties for transfer of the shares of defendant No. 1 company. It is stated

that even according to the allegations made in the plaint, the negotiations which had taken place were between defendant No. 2 and Mr. S.P.

Aggarwal and there was no privity of contract between the parties to the suit. It is also stated that in law there could be no sale of the company and

it could be only sale of shares of the company and even if there were negotiations in respect of the sale of the company by defendant No. 2,

defendants 1 and 3 could not be held bound by the same. It is stated that some negotiations did take place between Mr. S.P. Aggarwal and

defendant No. 2 and Mr. S.P. Aggarwal was clearly told that he should send a formal offer and in case the offer suited defendant No. 2 and was

acceptable to defendant No. 3, the parties could go ahead with the contemplated transaction of the sale of shares. The said firm commitment was

to come latest by 30th June, 1995 failing which it is alleged that the negotiations could be deemed to have come to an end. It is also stated that on

receipt of the concrete offer, the Chartered Accountants of both the parties were to exchange documents in order to expedite the matter. It is

further stated that as the negotiations were still going on and some information about the assets and liabilities of the defendant company was

required that some documents were exchanged between the Chartered Accountants of the parties so as to enable the said Mr. S.P. Aggarwal to

make a concrete offer for sale of defendant No. 1 company. It is alleged that no agreement was arrived at between the parties in respect of price,

time frame or other particulars and as such there was no concluded contract which could be superficially enforced by the parties. It is further

alleged that as no concrete offer of terms and conditions of the sale contract were conveyed by Mr. S.P. Aggarwal, defendant No. 2 did not have

an occasion to speak to defendant No. 3 regard ing the said transaction and the negotiations were taking place only in the individual capacity of

defendant No. 2. It is further alleged that pursuant to the failure of negotiations with Mr. S.P. Aggarwal, defendant had entered into an agreement

to sell the land owned by defendant No. 1 in Bijwasan on September 15,1995 with Shri Deepak Kaicker and entire sale consideration of Rs. 15

lakhs has been taken from him by defendant No. I pursuant to the said agreement to sell and possession of the land has also been delivered to him.

It is stated that the transaction of sale was complete and it was only a formal sale deed which remained to be executed for which no objection

certificate had been applied for by defendant No. 1. It is, Therefore, stated that no case whatsoever had been made out by the plaintiff for the

grant of an injunction. It was prayed that ad interim order of injunction passed oh October 11,1995 should be vacated.

(4) The basic question which requires consideration is whether, prima facie, there was a concluded agreement for sale of the shares of the

defendant company in favor of the plaintiff. The question of specific performance of the said contract could arise, only after I am satisfied that the

parties had entered into a concluded contract for sale of the shares of the defendant company. To appreciate the rival contentions of the parties, it

will be useful to refer to the agreement, reliance upon which is being placed by the parties. The agreement is in the form of a receipt which has been

executed by defendant No. 2. The contents of the receipt are as under :

RECEIVED from Mr. S.P. Aggarwal the sum of Rs. 1,00,000.00 (One lakh only) as advance towards the sale of Focus Properties Private

Limited, 805, Indraprakash, Barakhamba Road, ND-1. 17 June, 1995. sd/- (N-N. Taneja)

(5) The four ingredients necessary to make an agreement to sell are : (i) particulars of consideration; (ii) certainty as to party i.e. the vendor and the

vendee; (iii) certainty as to the property to be sold; and (iv) certainty as to other terms relating to probable cost of conveyance to be borne by the

parties, time, etc. If these ingredients are lacking in the agreement, the obligations contemplated u/s 16 for specific performance for Immovable

property would not arise. It is in this background that the receipt dated June 17, 1995 has to be examined.

(6) A perusal of the receipt which is said to be an agreement to sell, shows that neither the total sale consideration for which the shares of the

defendant company were allegedly agreed to be sold to the plaintiff is mentioned nor it is mentioned in the said receipt as to who will be the person

in whose favor the said shares are to be sold. Even the time during which the agreement was to be finalised has not been mentioned. The

receipt/agreement is wholly uncertain, vague and indefinite and it appears that the parties were still negotiating to arrive at the agreed terms and

conditions for sale of shares by defendants to Mr. S.P. Aggarwal. Prima fade, I am, Therefore, of the opinion that there was neither certainty as to

the parties to the agreement nor about the total sale consideration which was to be paid for transfer of shares nor even the time during which the

entire transaction was to be finalised.

(7) Moreover, in the case of a company incorporated under the Companies Act, it is not the company which is sold but these are the shares of the

company which are transferred by a shareholder in favor of another. Even assuming this agree- ment to be an agreement to sell, this has been

signed only by defendant No. 2 and not by defendant No. 3. Defendant No. 3 cannot be held to be bound by the said agreement alleged to have

been entered into by defendant No. 2. Defendant Nos.2 and 3 holds equal number of shares in the company and by no stretch defendant No. 3

can be directed to transfer her share holdings in favor of the plaintiff. The amount has been received as per the receipt from one Mr. S.P. Aggarwal

whereas the suit has been filed by Aggarwal Hotels Private Limited. The receipt does not disclose that Mr. S.P. Aggarwal was entering into the

transaction for and on behalf of the plaintiff company. I am, Therefore, prima facie, of the opinion that the receipt dated June 17, 1995 cannot be

said to be an agreement to sell the shares of defendant No. I company to the plaintiff company.

(8) In view of the fact that I am, prima facie, of the opinion that the receipt dated 17th June, 1995 is not the agreement to sell, I need not dwell

upon any other point at this stage for purposes of deciding the application for injunction. In view of the aforesaid, plaintiff will not be entitled to any

stay restraining the defendant from selling its properties in favor of third parties. The application has no merits and the same is, accordingly,

dismissed leaving the parties to bear their own cost. Injunction Order passed on October 11, 1995 stands vacated.