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**(2008) 05 DEL CK 0189**

**Delhi High Court**

**Case No:** I.A. No. 9747 of 2005 in C.S. (OS) No. 2423 of 1999

Sanober Vir

APPELLANT

Vs

Mr. Ashutosh Garg and Others

RESPONDENT

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**Date of Decision:** May 26, 2008

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 11, 144, 151

**Hon'ble Judges:** P.K. Bhasin, J

**Bench:** Single Bench

**Advocate:** Rakesh Aggarwal, for the Appellant; Manish Vashisht, Rikki Gupta and Sameer Vashisht, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

P.K. Bhasin, J.

The defendants 1 & 2 have filed an application under Order VII Rule 11 and Section 144 read with Section 151 of the Code of Civil Procedure, 1908 (for short "CPC") seeking rejection of the plaint in this suit and by this order I am disposing of that application.

2. The relevant facts culled out from the pleadings and the documents on record and about which there is no dispute between the parties may first be noted. The defendant No. 3 Landbase India Ltd., is a land developer. It has constructed a residential colony by the name of "The Laburnum Condominium Complex" in Sector 28, Gurgaon. While this Complex was under construction defendants 1 & 2 got allotted one residential Unit No. LGG 114, known as "Garden Green Town House" (hereinafter referred to as "the property in suit") in the said Condominium Complex vide agreement dated 27/04/95 executed in their favour by defendant No. 3. Under this agreement the defendants 1 & 2 had the right to have the sale deed executed

either in their own names or in the name of their nominee. Before the construction of the Complex could be completed the defendants 1 & 2 decided to assign their rights under the agreement with defendant No. 3 in favour of the plaintiff and her father and accordingly informed defendant No. 3 which in turn informed the defendants 1 & 2 that it had no objection to the assignment of their rights subject to their clearing the outstanding dues. On 30/09/98 the defendants 1 & 2 entered into an agreement with the plaintiff and her father whereby these defendants had agreed to assign their rights under the agreement dated 27/04/95 in favour of the plaintiff and her father for a total consideration of Rs. 1,06,00,000/- out of which Rs. 15,00,000 were paid to defendants 1 & 2 and the balance money was agreed to be paid within 45 days after the grant of clearance by the Appropriate Authority under the Income Tax Act. The defendant No. 3 on the request of defendants 1 & 2 substituted the names of the plaintiff and her father as the purchasers and also joined in the execution of the said agreement as a Confirming Party since finally on the completion of the construction of the project it only had to execute the formal sale deed in respect of the suit property and later on the father of the plaintiff transferred his right under the tri-partite agreement in her favour and then defendant No. 3 accepted the plaintiff as the sole purchaser of the suit property. It appears that with mutual understanding of the plaintiff and her father and defendants 1 & 2 the time for payment of balance price of the property in suit, which was to be paid within 45 days after the receipt of clearance under the Income Tax Act, was extended from time to time and defendants 1 & 2 started receiving the payment in instalments and by 11th September, 1999 a total sum of Rs. 99 lacs stood paid to them. At that time disputes started between the plaintiff and defendants 1 & 2 inasmuch as the plaintiff and her father were claiming that only seven lacs more were payable by them while according to the defendants 1 & 2 since the deferred payments were not paid to them on the due dates they were entitled to claim interest @ 18% p.a. on the delayed payments as had been agreed upon by the plaintiff and her father and on that account a sum of Rs. 16,79,819/- had also become payable to them which they demanded vide their letter dated 20th September, 1999 whereunder they had also expressed to complete the sale transaction on payment of this interest amount and the undisputed balance sale price of seven lacs but the plaintiff and her father refuted that liability by sending a notice dated 23rd September, 1999 through an advocate. According to the plaintiff there was no such agreement to pay interest. Since the plaintiff and defendants 1 & 2 could not resolve the dispute regarding interest payment the plaintiff filed this suit for a decree of specific performance of the contract dated 30.9.1998 and for possession of the suit property as also for compensation for the delay caused in handing over the possession thereof.

3. In the written statement filed by defendants 1 and 2 they have admitted execution of the existence of tri-partite agreement as also the payment of ninety nine lacs of rupees to them by the plaintiff. They however reiterated their stand that

the plaintiff was liable to pay interest on the delayed payments and since the same was not paid the breach of the original contract and the innovated contract was committed by the plaintiff and so they were not obliged to get the sale deed executed in favour of the plaintiff. These defendants also took an objection regarding territorial jurisdiction of this Court on the ground that since the property in suit is in Gurgaon the suit could be filed there only in view of the provisions of Section 16 CPC.

4. The defendant No. 3 has chosen not to file any written statement and its Counsel made a statement to that effect on 17/03/2003 and the reason for that appears to be that this defendant had already received the entire sale consideration which it was to get under the original agreement to sell with other two defendants and it must have been advised that it had to execute the sale deed in favour of the plaintiff and it had nothing to do with the fight between the plaintiff and defendants 1 & 2.

5. After filing of the written statement by defendants 1 & 2 they had moved the present application under Order VII Rule 11 CPC for rejecting the plaint on the ground that this Court had no territorial jurisdiction to entertain this suit for specific performance of the contract in respect the property in suit since it was in the State of Haryana. The plaintiff filed her reply opposing the same. However, before this application could be heard and disposed of the plaintiff moved one application (being IA No. 11610/2000) alleging therein that a sum of Rs. 99 lacs out of the total consideration of Rs. 1,06,00,000/- had been paid to defendants No. 1 & 2 and balance she was ready to pay and the only dispute raised by these two defendants was with regard to payment of interest amount for which she was ready to give sufficient security and so possession of the property in suit, which was at that time ready for occupation, be got delivered to her from defendant No. 3 who had not so far handed over the same either to the plaintiff or to defendants 1 & 2 and the dispute about payment of interest between the plaintiff and defendants could be decided by this Court in due course. According to the plaintiff interest amount in any case worked out to Rs. 4,26,329/- which she was ready to deposit in Court. Reply to that application of the plaintiff was filed only by defendants 1 & 2 and it was stated in the reply that the defendants were still willing to perform the agreement dated 30/09/98 on payment of last installment of Rs. 7 lacs and upto date interest on the delayed payment of instalments fixed for Rs. 91 lacs. Otherwise, the application was opposed inter-alia on the grounds that this Court had no territorial jurisdiction in the matter and that since this Court had upon an earlier application of the plaintiff under Order XXXIX Rules 1 & 2 CPC restrained the defendants from alienating the suit property till further orders the interest of the plaintiff was fully protected and further that if at all the possession of the property was ordered to be given to the plaintiff and that too without payment of interest amount claimed by them that would amount to decreeing the suit itself without disposal of the objection regarding the territorial jurisdiction of this Court.

6. While allowing the said IA No. 11610/2000 vide order dated 15/05/2001 this Court had observed as under:

...They also do not contest the prayer of the plaintiff for specific performance of Agreement to Sell dated 30.9.1998, subject to the condition that the entire interest amount as payable according to them be paid. The plaintiff has contested the liability towards payment of interest.... Therefore, the controversy in the suit is confined to the payment of interest only.... The admitted position which emerges is that the plaintiff has paid substantial amount towards sale consideration; that he is ready to pay the balance consideration; that the dispute is in respect of interest only and the defendants do not otherwise challenge the plaintiff's claim for specific performance and that the plaintiff is ready to secure the defendants' claim qua interest. Having regard to these facts and circumstances of the case, the application is allowed subject to following conditions:

A. The plaintiff shall pay balance sale consideration of Rs. 7 lakhs to defendants 1 and 2 within 15 days.

B. The plaintiff shall deposit a sum of Rs. 20 lakhs in this Court within a period of 15 days. This amount is qua disputed interest and if it is ultimately found that defendants 1 and 2 are entitled to interest, the defendants would remain secured and would receive the payment from the deposit made.

C. Without prejudice to the contentions of both the parties regarding payment of interest and quantum thereof, defendants 1 and 2 shall be entitled to withdraw a sum of Rs. 4.5 lakhs subject to furnishing of security to the satisfaction to the Registrar of this Court.

D. Balance amount shall be kept by the Registrar in a Bank in fixed deposit initially for a period of one year.

The defendant No. 3 is directed to handover the possession of the property to the plaintiff.

Application stands disposed of.

7. The defendants 1 & 2 challenged this order in appeal before a Division Bench of this Court but their appeal (being FAO(OS) 271/2001) was dismissed in limine vide order dated 18/06/2001 which is re-produced hereunder:

From a perusal of the impugned order it is seen that it is in the nature of a consent order. Learned Single Judge has recorded that appellants did not otherwise challenge the respondents "Claim for Specific Performance" and that the respondent was ready to secure appellants claim qua interest.

The impugned order sufficiently protects the interest of the appellant as the sale consideration has been directed to be paid to the appellant. Further the respondent has been required to deposit the entire amount of interest in court. We find no

ground to interfere with the impugned order in appeal, which proceeds on the basis of consent and is fair just and equitable.

Appeal is dismissed.

8. The plaintiff had deposited in Court a sum of Rs. 20 lakhs on account of interest being claimed by defendants 1 & 2 and also paid Rs. 7 lakhs to defendants 1 & 2 being the balance of sale consideration, pursuant to the aforesaid order dated 15/05/2001. After the dismissal of their appeal against the order dated 15/05/2001 the defendants 1 & 2 withdrew a sum of Rs. 4.5 lakhs out of the interest amount deposited in Court. On 18/06/2001 itself, when the appeal was dismissed, the defendant No. 3 handed over the possession of the property in suit to the plaintiff as it was directed to do by this Court. It appears that the plaintiff thereafter approached the defendant No. 3 for executing the sale deed also which it was supposed to execute in terms of the tri-partite agreement between the parties and the defendant No. 3 accepted that request and executed a sale deed in favour of the plaintiff on 08/08/2001 and got it registered also on 10/08/2001. The case thereafter was fixed for framing of issues and it also appears that the defendants 1 & 2 must have realized that since defendant No. 3 had already executed the sale deed in favour of the plaintiff the prayer of specific performance of contract made in the suit by the plaintiff stood satisfied and so thereafter they never asked for disposal of their application under Order VII Rule 11 CPC which they had filed in the year 2000. However, in the year 2005 the defendants 1 & 2 once again filed an application under Order VII Rule 11 CPC and Section 144 CPC, which is now being disposed of by this order and in this application once again they have prayed for rejection of the plaint on the ground that this Court has no territorial jurisdiction to try this suit for specific performance of the agreement to sell in respect of the immovable property situate in Gurgaon. It has also been claimed in the application that the order dated 15/05/2001 passed by this Court whereby possession of the property in suit was ordered to be given to the plaintiff needed to be recalled since no such direction could be given by this Court because of lack of territorial jurisdiction and consequently the possession of the property in suit was liable to be restored back by the plaintiff and parties put in the same position as existed before the passing of the order dated 15/05/2001.

9. This application has been opposed by the plaintiff inter alia on the grounds that this application is an abuse of process of law inasmuch as the possession of the property in suit was handed over to the plaintiff after defendants had restricted their defence only to their claim of interest and the same was recorded by this Court in the order dated 15/5/2001 which is now sought to be recalled. Another ground of opposition taken is that the relief of specific performance of contract in any case does not survive since the defendant No. 3 itself, which only was to execute the title document in favour of the plaintiff, has already executed the sale deed also on 10/08/2001 and the issue which now remains for decision is only the claim of

interest being raised by defendants 1 & 2 and so the question of territorial jurisdiction also does not survive.

10. I have heard the counsel for the defendants 1 & 2 and the plaintiff. Learned Counsel for defendants cited many judgments also on the point of territorial jurisdiction of Courts in suits for specific performance of contracts relating to immovable properties.

11. In my view from the foregoing narration of the factual background of this case itself it becomes clear that this application filed by defendant Nos. 1 and 2 is an abuse of process of law. As noticed already, when the plaintiff's application for directions to the defendant No. 3 to handover possession of the suit property to her was taken up for hearing the defendant Nos. 1 and 2 had claimed that they were not challenging the plaintiff's claim for specific performance of contract in respect of property in suit in case they were paid the entire interest amount being claimed by them. In the order dated 15.5.2001 it was categorically observed that the dispute between the parties was in respect of interest only and taking into consideration the fact that the defendant Nos. 1 and 2 at that time had restricted themselves only to their claim of interest, this Court had passed an order directing defendant No. 3 to handover the possession of the suit property to the plaintiff. Even though the defendant Nos. 1 and 2 had challenged that order before the Division Bench, but the Division Bench also noticed the fact that the said direction to defendant No. 3 had been given in view of the consent given on behalf of these two defendants. Thereafter, as also noticed already, even though defendant No. 3 was not directed to execute the sale deed in respect of suit property, but on being approached by the plaintiff for the execution of the sale deed in her favour the defendant No. 3 executed sale deed. In these circumstances, the plaintiff's claim, as far as specific performance of contract by directing defendant No. 3 to execute the sale deed in respect of property in suit in favour of the plaintiff and to handover the possession thereof stood satisfied. Defendant Nos. 1 and 2 thereafter did not raise any objection regarding the execution of the sale deed in favour of the plaintiff by defendant No. 3 which shows that it had really nothing to object to that act of defendant No. 3. I am in full agreement with the submission of learned Counsel for the plaintiff that since claim of the plaintiff for specific performance of contract stands fully satisfied, the only dispute which this Court now has to resolve is with regard to the claim of interest of defendant Nos. 1 and 2 against the plaintiff and for deciding that controversy this Court certainly has the territorial jurisdiction. There is no doubt that in all the judgments cited by learned Counsel for defendant Nos. 1 and 2 it had been held that suit for specific performance of contract in respect of immovable property would lie only before that court within whose jurisdiction the property is situated, but now that in the present case that claim of the plaintiff no longer survives for adjudication having been satisfied by the defendants themselves, the present application filed by defendant Nos. 1 and 2 for rejecting the plaint is without any merit and so liable to be rejected.

I.A. No. 9747/2005 is accordingly rejected with costs of Rs. 10,000/-.