

(2009) 09 DEL CK 0433

Delhi High Court

Case No: CS (OS) 1213 of 2005 and IA No's. 11452 of 2007 and 3604 of 2008

Anant Raj Agencies P. Ltd.

APPELLANT

Vs

Sh. Harvinder Singh Saini and
Another

RESPONDENT

Date of Decision: Sept. 4, 2009

Hon'ble Judges: Reva Khetrapal, J

Bench: Single Bench

Advocate: Neeraj Malhotra, for the Appellant; Ravi Gupta and Gaurav Gupta, for the Respondent

Judgement

Reva Khetrapal, J.

The plaintiff herein is a company incorporated under the Companies Act. The defendants No. 1 and 2, being the owners of property B-5/96, Safdarjang Enclave, New Delhi admeasuring 199 sq. yards, had entered into an agreement to sell dated 06.03.2003 whereunder the defendants had agreed to sell and the plaintiff had agreed to purchase the said property for a consideration of Rs. 62 lakhs. At the time of the execution of the agreement, the plaintiff paid a sum of Rs. 62 lakhs out of the said agreed amount in the following manner:

(i) Rs. 30 lakhs vide cheque No. 408531 dated 05.03.2003 drawn on the State Bank of India, Chanderlok Building, New Delhi in favour of the defendant No. 1.

(ii) Rs. 30 lakhs vide cheque No. 408532 dated 05.03.2003 drawn on the State Bank of India, Chanderlok Building, New Delhi in favour of the defendant No. 2.

2. Both the aforesaid cheques were received and got encashed by the defendants. The balance sum of Rs. 2 lakhs was to be paid to the defendants upon execution of a sale deed/transfer document of the said property in favour of the plaintiff and against handing over physical vacant possession of the suit property to the plaintiff. In order to complete the deal, the defendants on the plea that they wanted to hunt for another accommodation for themselves, stated that they required a period of

one year for execution of the sale deed, to which the plaintiff readily agreed. The said period expired on 06.03.2004. The defendants not having come forward to execute the sale deed and not having vacated the property even after the expiry of the aforesaid period of one year, the plaintiff issued a registered legal notice dated 20th June, 2005, calling upon the defendants to intimate the date and time for execution of the sale deed within seven days of the receipt of the said notice. No reply to the said notice was sent by the defendants.

3. After receipt of the notice, however, the defendants again sought permission of the plaintiff to complete the sale deed in July, 2005, but despite the assurance extended by the defendants to execute the sale deed in July, 2005, the defendants failed to fix any date for the execution thereof. Thus, it became abundantly clear to the plaintiff that the defendants were unnecessarily trying to gain time. The plaintiff accordingly instituted the instant action for specific performance of the agreement to sell dated 06.03.2003 along with the prayer for a permanent injunction restraining the defendants from selling, transferring, disposing of or parting with the possession of the property in favour of any one, except the plaintiff.

4. The plaintiff has categorically averred that the plaintiff always has been and is still ready and willing to perform its obligations under the contract, and that the plaintiff is ready and willing to pay Rs. 2 lakhs against execution of the sale deed and against handing over of the physical vacant possession of the suit property to the plaintiff.

5. Summons of the suit were issued to the defendants No. 1 and 2 and in the meanwhile, the defendants were restrained by an ex parte ad interim injunction from disposing of or parting with the possession of the suit property to any one except the plaintiff, subject to the plaintiff depositing the balance amount of consideration of Rs. 2 lakhs in the name of the Registrar General of this Court within one week of the date of passing of the order, i.e., September 01, 2005. The plaintiff having deposited the aforesaid sum of Rs. 2 lakhs, the order passed on 1st September, 2005 was confirmed till the disposal of the suit by a subsequent order dated March 09, 2006.

6. A joint written statement contesting the suit was filed by the defendants No. 1 and 2 to which the plaintiff Company filed its replication. On 18.01.2007, on the pleadings of the parties the following issues were framed for adjudication:

1. Whether the plaint has been signed and verified and the suit is instituted by a duly authorised person? OPP
2. Whether the plaintiff had advanced a sum of Rs. 60 lakhs towards the loan and the agreement dated 6th March, 2003 was executed by way of a co-lateral security? OPD
3. Whether the suit property is ancestral property and the defendants had no right to sell the same? OPD

4. Whether the agreement to sell dated 6th March, 2003 is legal, valid and binding on the parties? OPP

5. Whether the plaintiff has been and is ready, willing and able to perform its part of the obligations as per the agreement to sell dated 6th March, 2003? OPP

6. Whether the plaintiff is entitled to the relief of specific performance of the agreement dated 6th March, 2003? OPP

7. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP

8. Relief.

7. The plaintiff adduced its evidence by tendering in evidence the affidavit by way of evidence of Mr. Anil Sarin, the Managing Director of the plaintiff Company (Exhibit-PW1/A). The witness (PW1 Mr. Anil Sarin) also tendered in evidence a resolution dated 08.08.2005 passed by the Board of Directors of the plaintiff Company, authorising and empowering him to sign, verify and present the plaint and further to give evidence and to depose before this Court. The original resolution book was brought to Court and the said resolution exhibited as Exhibit PW1/1. The registered notice dated 20th June, 2005 issued by the plaintiff Company through its Advocate calling upon the defendants to intimate the date and time of execution of the sale deed (the receipt of which was admitted in the written statement), was exhibited as Exhibit PW1/1A. Thereafter, the plaintiff produced in the witness box PW2 Shri Amrendra Singh Thukral, Branch Manager, State Bank of India, Chandralok Building, Janpath, New Delhi, who produced the statement of account No. 01000074102 of the plaintiff Company, M/s. Anant Raj Agencies Private Limited, in the State Bank of India, Chandralok Building, Janpath, New Delhi for the period 1st May, 2003 to 26th February, 2005 duly certified under the Bankers Book Evidence Act (pages 1 to 54 and pages 1 to 52 exhibited as Exhibit PW2/A and Exhibit PW2/B).

8. The defendants failed to adduce any evidence to substantiate their defence and on 20th April, 2009, the statement of the defendants' Counsel was recorded by the learned Local Commissioner to the effect that the defendants had not contacted him and he had no instructions from them nor their whereabouts were available with him. On August 04, 2009, Mr. Ravi Gupta, the learned Counsel for the defendants reiterated before this Court that he had no instructions from the defendants and accordingly the evidence of the defendants was closed by this Court by order of the same date.

9. I have heard the submissions made at the bar by Mr. Neeraj Malhotra, the learned Counsel for the plaintiff and Mr. Ravi Gupta, the learned Counsel for the defendants and my findings on the issues framed for adjudication are as follows.

Issue No. 1

10. As already stated, PW1 Mr. Anil Sarin, the Managing Director of the plaintiff Company, has proved in evidence the resolution dated 08.08.2005 of the Board of Directors (Exhibit PW1/1) authorising him to sign and verify the plaint and to institute the present suit. The original minute book was also produced before this Court. Nothing has emerged in the cross-examination of this witness to discredit his statement that he was duly authorised and empowered to institute the present proceedings. There is, therefore, no difficulty in arriving at the conclusion that the plaint has been signed and verified and the suit instituted by a duly authorised person.

11. Issue No. 1 is accordingly decided in favour of the plaintiff and against the defendants.

Issues No. 2 and 3

12. Issues No. 2 and 3 are being dealt with together for the sake of convenience, as the onus of proving both the aforesaid issues is upon the defendants.

13. No evidence has, however, been adduced by the defendants to show that the plaintiff had advanced a sum of Rs. 60 lakhs by way of loan to the defendants, and the agreement dated 6th March, 2003 was executed by way of collateral security. Similarly, no evidence has been adduced by the defendants to show that the suit property was ancestral property, and the defendants had no right to sell the same.

14. The learned Counsel for the defendants, in the course of the cross-examination of PW1 Mr. Anil Sarin, no doubt suggested to the witness that the agreement dated 6th March, 2003 was a loan agreement, that it was executed as a collateral security and that it was agreed upon between the parties that the agreement would not be acted upon, but all the aforesaid suggestions were categorically denied by PW1 Mr. Anil Sarin. The witness also denied the suggestion that the defendants had paid interest upto May, 2005, and it was only when the interest was not paid in June, 2005 that the plaintiff raised the demand for enforcement of the agreement to sell. Further, the witness denied as incorrect the suggestion that the suit property was worth Rs. 2 crores at the time of the transaction, and categorically asserted that at the time of the transaction, the value of the property was Rs. 62 lakhs only. Not even a suggestion was put to the witness that the suit property was ancestral property or purchased from the funds yielded by sale of ancestral property.

15. In view of the aforesaid, I have not a least bit of hesitation in holding that the defendants have failed to discharge the onus placed upon them of proving issues No. 2 and 3, which are accordingly decided in favour of the plaintiff and against the defendants.

Issues No. 4 and 5

16. Issues No. 4 and 5 relate to the legality and validity of the agreement to sell dated 6th March, 2003 and as to whether the plaintiff has been and is ready and

willing to perform its part of the obligations under the said agreement and are accordingly being dealt with together.

17. In order to substantiate the plaintiff's contention that the agreement to sell dated 6th March, 2003 was legal, valid and binding on the parties, PW1 Anil Sarin in his affidavit by way of evidence (Exhibit PW1/A) stated that the defendants being the owners of property B-5/96, Safdarjang Enclave, New Delhi admeasuring 199 sq. yards, in order to meet their genuine requirement approached the plaintiff and proposed to sell the said property, with the super-structure constructed thereon, including the land underneath, which the plaintiff agreed to purchase. Accordingly, an agreement to sell dated 06.03.2003 (Exhibit P-1) was duly signed and executed by the defendants in favour of the plaintiff and the plaintiff agreed to purchase the suit property for the sale consideration of Rs. 62 lakhs. PW1 further stated that in order to show their bonafide ownership and possession of the suit property and further to show their willingness to sell the suit property, and enter into an agreement to sell with the plaintiff, the defendants also handed over and delivered to the plaintiff the four original sale deeds all dated 23.01.1995 executed between the defendants No. 1 and 2 and Shri S.C. Sharma, Shri Manmohan Sharma, Shri Jagdish Chander Sharma and Shri A.K. Sharma, by virtue of which the defendants No. 1 and 2 became the absolute and legal owners of the suit property. The said four original sale deeds dated 23.01.1995, it may be mentioned, are admitted by the defendants and exhibited as Exhibit P-2 to Exhibit P-6. The details of the said sale deeds were given by the witness as under:

- (a) Sale deed dated 23.01.1995 having registration No. 388 Additional Book No. 1, Volume No. 376 at pages No. 165-177.
- (b) Sale deed dated 23.01.1995 having registration No. 389 Additional Book No. 1, Volume No. 376 at pages No. 178-190.
- (c) Sale deed dated 23.01.1995 having registration No. 390 Additional Book No. 1, Volume No. 376 at pages No. 191-203.
- (d) Sale deed dated 23.01.1995 having registration No. 391 Additional Book No. 1, Volume No. 377 at pages No. 1-13.

18. PW1 further deposed that the defendants No. 1 and 2 also delivered to the plaintiff the original conveyance deed dated 16.01.1995 having registration No. 150, Additional Book No. 1, Volume No. 369 at pages 50 to 51 (Exhibit P-6) along with the aforesaid four original sale deeds executed in favour of the above-said four persons.

19. It is further in the evidence of PW1 Mr. Anil Sarin that out of the total sale consideration of Rs. 62 lakhs, the plaintiff paid Rs. 60 lakhs immediately on the execution of the agreement to sell dated 06.03.2003 by way of two cheques which were received and got encashed by the defendants. The details of the aforesaid two cheques, the witness stated, were as under:

(i) Rs. 30,00,000/- (thirty Lacs only) vide cheque No. 408531 dated 05.03.03 drawn on the State Bank of India, Chanderlok Bldg., New Delhi in favour of the defendant No. 1.

(ii) Rs. 30,00,000/- (Rupees Thirty Lacs only) vide cheque No. 408532 dated 5.3.03 drawn on the State Bank of India, Chanderlok Building, New Delhi in favour of the defendant No. 2.

20. It may be recapitulated that by order of this Court dated September 01, 2005, the plaintiff was required to deposit the balance amount of sale consideration of Rs. 2 lakhs in the name of the Registrar General of this Court. The said amount is at present lying deposited in this Court. Thus, as on date, the plaintiff has paid the entire sale consideration to the defendants No. 1 and 2 except the sum of Rs. 2 lakhs which is lying deposited with this Court.

21. Apart from examining PW1 Mr. Anil Sarin, the plaintiff also adduced the evidence of PW2 Shri Amrendra Singh Thukral, Branch Manager, State Bank of India, Chandralok Building, Janpath, New Delhi, to show that the plaintiff was always ready and willing to perform its part of the contract. PW2 Shri Amrendra Singh Thukral proved on record the details of the bank account of the plaintiff, M/s. Anant Raj Agencies Private Limited, i.e., Account No. 10185775620 (old No. 01000074102) for the years 01.03.2003 to 26.02.2005. The statement of account, as stated, was duly certified under the Bankers Book Evidence Act (pages 1 to 54 and pages 1 to 52 - Exhibit PW2/A and Exhibit PW2/B). Not a single query was put to this witness in cross-examination to disprove his statement or to challenge the veracity of the bank statement regarding the account of the plaintiff proved by PW1 on the record. Thus, the necessary inference which arises from the statement of this witness is that the plaintiff always had ample funds available with him to complete the sale transaction at the relevant point of time.

22. In view of the aforesaid, the statement made by PW1 Mr. Anil Sarin, on oath, that the plaintiff Company has always been ready and willing and is still ready and willing to perform its part of the obligation, cannot be disbelieved. The further statement made by the witness that in fact the plaintiff has already performed a substantial part of its obligation by paying Rs. 60 lakhs to the defendants and it is only the defendants who have failed to perform their part of the contract also stands corroborated from the evidence on record. Further, there is no evidence forthcoming on the record to show that the agreement to sell dated 6th March, 2003 is not legal, valid and binding on the parties.

23. It is accordingly held that the plaintiff has succeeded in discharging the onus of proving issues No. 4 and 5, which are decided in the plaintiff's favour and against the defendants.

24. In view of my findings on issue Nos. 4 and 5, the necessary corollary is that the plaintiff must be held entitled to the relief of specific performance of the agreement dated 6th March, 2003. The defendants have failed to substantiate the averments made by them in their written statement that the agreement dated 6th March, 2003 was a loan transaction, that the defendants required the loan amount to enable them to purchase land at Ropar, which the defendant No. 1 wanted for developing a colony, that the plaintiff required the defendants to furnish the security of house No. B-5/96, Safdarjang Enclave, New Delhi as collateral security for the loan, and that the plaintiff got executed the agreement to sell dated 6th March, 2003 in order to secure the repayment of the loan amount of Rs. 60 lakhs advanced by the plaintiff to the defendants. The defendants also failed to substantiate the averment made by them that the defendants had been paying interest at 12% per annum on the loan amount of Rs. 60 lakhs upto May, 2005. As stated above, no evidence has been adduced by the defendants nor a scrap of paper produced in this regard. There is, therefore, no reason for this Court to accept the plea of the defendants that the agreement to sell dated 6th March, 2003 was a camouflage and that it was agreed between the parties that the agreement to sell would not be acted upon. The defendants' case having fallen to the ground and the plaintiff having substantiated its case that there was a valid agreement to sell, that it had acted upon the said agreement by making payment of the entire sale consideration and that it had given the defendants sufficient time to execute the sale deed and notwithstanding, the defendants had not performed their part of the contract despite issuance of legal notice to them by the plaintiff, the defendants must be held to be the defaulting party. There also does not appear to be any plausible reason as to why the relief of specific performance should not be granted to the plaintiff, as prayed for by the plaintiff.

25. Issue No. 6 is accordingly decided in favour of the plaintiff and against the defendants.

Issues No. 7 and 8

26. In view of the aforesaid, a decree for specific performance of the agreement dated 6th March, 2003 is passed in favour of the plaintiff and against the defendants directing the defendants No. 1 and 2 to execute the sale deed in respect of property No. B-5/96, Safdarjang Enclave, New Delhi admeasuring 199 sq. yards in favour of the plaintiff and to get the same registered in accordance with law. The defendants No. 1 and 2 shall execute the sale deed and deliver vacant physical possession of the suit property within four weeks from the date of passing of this order. The defendants shall be entitled to receive the balance sale consideration in the sum of Rs. 2 lakhs lying deposited with the Registrar General of this Court with the interest accrued thereon upon execution of the sale deed and delivery of the physical vacant possession of the suit property to the plaintiff. In the event of default of the defendants in executing the sale deed, the plaintiff would be entitled to get the sale

deed executed by an officer to be appointed by the order of the Court upon an application being filed by the plaintiff. The plaintiff would also be entitled to a decree of injunction against the defendants, their employees, agents and others restraining them from selling, transferring, disposing of or parting with the possession of the property in favour of any one, except the plaintiff till the execution of the sale deed in its favour.

27. The suit is accordingly decreed with costs in favour of the plaintiff and against the defendants in the above terms.

CS(OS) 1213/2005 and IA Nos. 11452/2007 and 3604/2008 stand disposed of accordingly.