

Mohd Arif vs M/S Dnd Buildcon & Ors on 18 May, 2015

Author: Manmohan

Bench: Manmohan

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(05) 2989/2014 & I.As. 19103/2014, 1364-1365/2015

MOHD ARIF

..... Plaintiff

Through: Mr. Gaurav Mitra, Advocate with
Mr. N. Raja Singh, Advocate.

versus

M/S DND BUILDCON & ORS

..... Defendants

Through: Mr. Himanshu Bohara, Advocate for
Mr. S.P. Aggarwal, Advocate for
defendants No.3 and 4.

Mr. R.M. Sinha, Advocate for
defendants No.5 and 6.

Mr. Yogesh Kumar Rana, Advocate for
defendants No.7 and 8.

Mr. Sarvesh Rai, Advocate for
Mr. Ankit Jain, Advocate for defendant
No.9.

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Date of Decision : 18th May, 2015

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN, J: (Oral)

1. Present suit has been filed for specific performance, damages, mandatory and permanent injunction.

2. On 26th September, 2014, this Court granted an ex parte ad interim injunction order restraining the defendants from selling, alienating, transferring or parting with possession of suit property i.e. second floor of the property bearing No.D-225, Anand Vihar, Delhi-110092.

3. Today, Mr. R.M. Sinha, learned counsel for defendants No.5 and 6 presses for vacation of stay. He states that though the defendants No.3, 4, 6, 7 and 8 had entered into a Collaboration Agreement

dated 12th July, 2012 with defendants No.1 and 2 with regard to construction of suit property i.e. second floor of Plot No.D-225, Anand Vihar, Delhi-110092 and had given liberty to defendants No.1 and 2 to get his second floor transferred in their names, yet the said Agreement confers no right, title and interest in favour of the defendants No.1 and 2.

4. Mr. Sinha also states that plaintiff had only made a monetary investment with defendants No.1 and 2 and consequently the plaintiff is entitled to refund of principal sum along with profit of Rs.80 lacs as agreed upon between the parties. In support of his contention, he draws this Court's attention to the Memorandum of Understanding dated 22nd November, 2012 executed between the plaintiff and defendants No.1 and 2.

5. Mr. Sinha further states that the Collaboration Agreement executed between the defendants had been terminated by defendants No.3, 4, 6, 7 and 8 and as a consequence, the plaintiff can only seek reliefs and remedies against the defendants No.1 and 2 and not against the defendants No.3, 4, 6, 7 and 8.

6. Mr. Gaurav Mitra, learned counsel for plaintiff submits that under the Collaboration Agreement, defendants No.1 and 2 had the right to negotiate for sale of the second floor of the suit property and to execute an Agreement to Sell. In support of his contention, he relies upon clauses 11 and 16 of the Collaboration Agreement dated 12th July, 2012 which read as under:-

"11) That after the construction Ground floor up to ceiling level, First Floor up to ceiling level, Third floor up to ceiling level shall go to the parties of the First Part/Owners and the Second Floor up to the ceiling level shall go the Party of the Second Party/Builder. The roof right shall go to the present second floor owner i.e., Mr. Arun Gupta & Mrs. Sujata Gupta.

As the roof right will be with 3rd Floor owner (Mr. Arun Gupta & Mrs. Sujata Gupta) hence other floor owners will be allowed to go to roof only to attend/check their water tanks.

xxx xxx xxx

16) That the owner shall be entitled to sell, transfer, convey and assign their allocation to any prospective buyer and to receive the sale proceeds in respect thereof in their own names during or after the completion of construction, without any objection or hindrance by the builder. The builder shall be entitled to book and receive/the advance money against his allocation during the course of construction however the registry for his allocation shall be done as per first owner requirement"

7. Mr. Mitra also states that in pursuance to the said Collaboration Agreement, a Memorandum of Understanding and an Agreement to Sell both dated 22nd November, 2012 had been executed between the plaintiff and defendants No.1 and 2.

8. Mr. Piuyush Prabhakar, learned counsel for defendants No.1 and 2 states that plaintiff by way of the present suit proceedings cannot seek specific performance of the Collaboration Agreement

executed between the defendants No.1 and 2 on the one hand and defendants No.3, 4, 6, 7 and 8 on the other hand.

9. Having heard the learned counsel for parties, this Court finds that in the Memorandum of Understanding which had been executed between the defendants No.1 and 2 and the plaintiff, it had been specifically stipulated that in the event of the defendants No.1 and 2 not executing the sale documents in favour of the plaintiff, the plaintiff would be entitled to only a profit of Rs.80 lacs over and above their investment of Rs.2 crores in two properties meaning thereby that in the present instance the plaintiff would be entitled to damages/compensation of Rs.1,40,00,000/-. The relevant portion of Memorandum of Understanding dated 22nd November, 2012 executed between the plaintiff and defendants No. 1 and 2 is reproduced hereinbelow:-

"Whereas Sh. Praveen Nagpal has taken an amount of Rs.2,00,00,000/- (Rupees Two Crores Only) against the Collateral Security of Collaboration Agreement of Second Floor of Property No.17, Shyam Enclave, Delhi-110092 and Second Floor of Property No.D-225, Anand Vihar, Delhi- 110092.

The said amount of Rs.2,00,00,000/- (Rupees Two Crores Only) will be returned to Mr. Mohd. Arif along with Profit 8000000/- (Eighty Lac) on or before 21.11.2013. Total 2.8000000/- (Two Crore Eighty Lac only).

It is hereby mutually agreed that the Collateral Security of Collaboration Agreement in respect of Second Floor of Property No.17, Shyam Enclave, Delhi-110092 and Second Floor of Property No.D-225 Anand Vihar, Delhi-110092 will be returned by Mr. Mohd. Arif to Mr. Praveen Nagpal at the time of full and final payment."

10. Even the last Memorandum of Understanding/Extension dated 03rd July, 2014 executed between the same parties states as under:-

"1. That now the first party has agreed to execute the sale documents of the said both properties upto 29.06.2014 positively in favour of the second party and now if the first party fails to execute the same till 31.07.2014, then for the repayment of the said earnest money/bayana, the first party has already issued and handed over to the second party total eleven post dated cheques all dated 30.06.2014 in favour of the second party on 10.03.2014, however, the date of cheques in question inadvertently could not be mentioned in the Deed of MOU/Extension Deed dated 10.03.2014 executed between the parties, against the principle amount as well as the profit of Rs.80 Lacs (Rs.Eighty Lacs) on the amount of earnest money of Rs.2 Crores. (Rs.Two Crore), total 11 cheques amount Rs.2,80,00,000/- (Rs.Two Crore Eighty Lacs). The details of the said cheques are as follows :-

S.No.	CHEQUE NO.	AMOUNT IN Rs.	DATED	DRAWN ON
1.	406401	25,00,000/-	30.06.2014	YES BANK, Branch at

Ram Vihar,
Delhi

2.	406402	25,00,000/-	30.06.2014	-----do-----
3.	406403	25,00,000/-	30.06.2014	-----do-----
4.	406404	25,00,000/-	30.06.2014	-----do-----
5.	406405	25,00,000/-	30.06.2014	-----do-----
6.	406406	25,00,000/-	30.06.2014	-----do-----
7.	406407	25,00,000/-	30.06.2014	-----do-----
8.	406408	25,00,000/-	30.06.2014	-----do-----
9.	406409	25,00,000/-	30.06.2014	-----do-----
10.	406410	25,00,000/-	30.06.2014	-----do-----
11.	406411	30,00,000/-	30.06.2014	-----do-----

2. That if the first party fails to execute the sale documents of the said both the properties in favour of the second party on or before 31.07.2014, then the second party shall present the said all cheques for its encashment in the bank, for which the first party is legally liable and bound to pay the said cheques amount i.e. total Rs.2,80,00,000/- (Rupees Two Crore, Eighty Lacs only).

11. It is pertinent to mention that the cheques of Rs.2,80,00,000/- under the two Agreements had been handed over in advance by the defendants No.1 and 2 to the plaintiff.

12. Consequently, this Court is of the view that monetary damages is an adequate relief to the plaintiff on account of alleged failure on the part of defendants No.1 and 2 to execute the sale deed.

13. At this stage, learned counsel for plaintiff tries to rely on Clause 3 to Memorandum of Understanding/Extension dated 03rd July, 2014 which reads as under:-

"3. That no further extension will be granted to the first party by the second party and if first fails then the first will peacefully provide the possession of both the properties to the second party."

14. In the opinion of this Court, the aforesaid Clause cannot be read to mean that monetary compensation will not be an adequate relief in the present case on account of breach by defendants No.1 and 2 to execute the sale agreement. If the intent of the parties was as contended by counsel for plaintiff, the Clause 3 would have stated that the monetary compensation provided in Clauses 1 and 2 is not an adequate relief and the plaintiff shall be entitled to seek specific performance of Agreement to Sell. Since the Clause 3 does not state so, this Court is of the view that monetary compensation is an adequate relief for alleged breach of the contract by the defendants No.1 and 2.

15. However, as even the cheques which had been handed over by the defendants No.1 and 2 to the plaintiff under Memorandum of Understanding/Extension have been dishonoured, this Court to protect the interest of the plaintiff, directs defendants No.1 and 2 to deposit in Court a sum of Rs.1.40 crores within a period of six weeks.

16. It is made clear that this order is without prejudice to the rights and contentions or the remedies which the defendants No.1 and 2 may have against defendant No.3. With the aforesaid observations and directions, the interim order dated 26th September, 2014 stands disposed of.

List the matter on 20th July, 2015.

MANMOHAN, J MAY 18, 2015 js