

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SUIT FOR SPECIFIC PERFORMANCE

Judgment reserved on : December 01, 2008

Judgment delivered on : December 05, 2008

RFA 416/2008

MINU CHATERJEE

Appellant
Through: Mr.V.M. Issar, Advocate

VERSUS

LAXMI JAIN

Respondent
Through: Mr.S.P.Singh Chaudhary, Advocate

CORAM:

HON'BLE MR.JUSTICE PRADEEP NANDRAJOG
HON'BLE MR.JUSTICE J.R. MIDHA

PRADEEP NANDRAJOG, J.

1. The appellant has suffered a decree directing her to receive the balance sale consideration and execute the sale deed in respect of Flat No.32-B, Pocket-A, Mayur Vihar, Phase-II, Delhi.
2. The case of the respondent was that she was desirous of purchasing an immovable property for which an agreement to sell, Ex.PW-2/B, was executed by the appellant on 31.12.2003 recording therein that the sale price agreed was Rs.14,70,000/- (Rupees Fourteen Lacs Seventy Thousand only) and that she paid Rs.1,00,000/- by three cheques of dated 31.12.2003 to the appellant and that said fact was duly recorded in the agreement to sell. That three months time was stipulated for completion of the sale transaction within which time she had to pay the balance sale consideration. That the appellant desired some more time to execute the sale deed and that further sum of Rs.2,00,000/- (Rupees Two Lacs only) was paid by her on 8.3.2004 on receipt whereof the appellant executed the receipt Ex.PW-2/C. That further sum of Rs.50,000/- (Rupees Fifty Thousand only) was paid by her to the appellant for which she executed the receipt Ex.PW- 2/D. Further sum of Rs.50,000/- (Rupees Fifty Thousand only) was paid on 17.5.2004 for which the appellant while acknowledging receipt, executed Ex.PW- 2/E. That in this manner only Rs.11,20,000/- remained as the amount outstanding which she offered to the appellant on 2.9.2004 who postponed the issue of execution of the sale

deed stating that her husband was away in the USA and she would await his return. It was stated that sensing mischief a notice dated 4.9.2004, Ex.PW-2/F was sent under registered AD post at two addresses of the appellant vide postal receipt Ex.PW-2/G and Ex.PW-2/H.

3. The appellant filed a written statement denying having executed the agreement to sell. She labeled the agreement to sell Ex.PW-2/B as a forged and fabricated document. Affirming having received Rs.1,00,000/- (Rupees One Lac only) by means of three cheques from the respondent, she stated that she received the said amount under an oral agreement whereunder it was agreed that the property shall be sold for Rs.17,70,000/- (Rupees Seventeen Lacs Seventy Thousand only). She denied having received any further amounts from the respondent.

4. On the pleadings of the parties, it is obvious, that the material issue which arose for consideration was whether the appellant had executed the agreement to sell Ex.PW-2/B and whether she had received further amounts from the respondent as claimed by the respondent and whether the respondent had always been ready and willing to perform her obligations under the agreement, if the same was proved as duly executed.

5. Respondent examined one Shri S.P.Singh as PW-1, who claimed to be a handwriting expert. He proved his report wherein he had opined that the disputed signatures of the appellant on the agreement to sell and the receipts were those of the appellant.

6. The respondent examined herself as PW-2 and reiterated her version pleaded in the plaint and proved the agreement to sell and the receipts noted hereinabove. She identified the signatures of the appellant on the said documents as also those of the witnesses who were present and had witnessed the execution of the said documents.

7. Abhinandan Jain was examined as PW-3 who deposed that he was present when the agreement to sell Ex.PW-2/B was drawn up. He stated that the blank spaces were filled up before the appellant executed the same. The witness was cross-examined and a suggestion was put to him that the appellant was forced and coerced into executing Ex.PW-2/C which was denied by him.

8. H.C. Grover, the stated property dealer who had brokered the deal was examined as PW-4. He deposed to have settled the bargain between the parties and affirmed the case pleaded by the respondent. He identified his signatures on the agreement to sell, Ex.PW-2/B. He stated that one Sunil Gupta was also present and even he had witnessed the execution of the agreement to sell. The witness was cross-examined. Relevant would it be note that a suggestion was put to him that the signatures of the appellant were obtained under threat and coercion on Ex.PW-2/C, Ex.PW-2/D and Ex.PW-2/E. Needless to state the witness denied the suggestion.

9. Sunil Kumar Gupta the second witness to the agreement to sell Ex.PW-2/B was examined as PW-5. He deposed that he was present when the agreement to sell was

executed and that he had witnessed the same. In cross- examination he admitted that he was the brother of the respondent.

10. The appellant examined herself as DW-1 and in her examination- in-chief stated that she never executed the agreement to sell Ex.PW-2/B. She stated that her signatures were forged evidenced by the fact that she always signed as M.Chaterjee and never as M.Chawla. She stated that PW-4, a property dealer had visited her house on 31.12.2003 to negotiate the sale of her flat and that she demanded Rs.17,70,000/- (Rupees Seventeen Lacs Seventy Thousand only) as the price thereof. She stated that the respondent demanded, for her perusal, the original title deeds of the property and at that stage it was noted that in the title documents the flat No. was incorrectly mentioned as 82-B instead of 32-B in the affidavit of Ravinder Kumar Kaul from whom she had purchased the property and that the respondent desired a correction to be made. She stated that PW-4 undertook to get the errors rectified and at that point of time obtained her signatures on four blank papers. Affirming having received Rs.1,00,000/- (Rupees One Lac only) as earnest money, she asserted that the receipts were got prepared by using the blank signed papers which were got signed from her.

11. The appellant was extensively cross-examined and admitted that she had been signing sometimes as M.Chaterjee, sometimes as M.Chawla and sometimes as Meenu Chawla.

12. The next witness examined by the respondent was Constable Satish, DW-2 who proved a report mark A received by the DCP in which appellant had made a grievance of the agreement to sell being a fraudulent document. In cross-examination the witness stated that he had no knowledge as to what happened to the complaint. DW-3, HC Mukesh Kumar also deposed about the complaint being received. So did DW-4, SI Noor Mohd. who deposed that the complaint evidenced a civil dispute and hence no action was taken thereon. DW- 5, HC Achint Dass also referred to a complaint being received. It may be noted at this stage that nothing turns on the testimony of DW-2 to DW-5.

13. One Syed Sarfaraz Ahmed, a handwriting expert was examined as DW-6 who proved his report Ex.DW-6/1 to the effect that the signatures of the appellant on the agreement to sell and all the receipts were not those of the appellants.

14. Mayank Goswami was the next witness examined by the appellant who also has been referred to as DW-6. He produced the register maintained by his father, the notary public before whom Ex.PW-2 was notarized on 31.12.2003. He stated that there is no entry in the said register pertaining to the agreement to sell in question.

15. The witness was cross-examined. He deposed that he had no knowledge about the register which he has produced. He admitted that the register did not have any pagination. With respect to the signatures of the notary public on the agreement to sell Ex.PW-2/B he deposed that he was not in a position to identify the signatures at point D on the same.

16. Needless to state, the argument of the appellant before the learned Trial Judge was predicated firstly on the plea that the testimony of DW- 6, Mayank Goswami established that the agreement to sell Ex.PW-2/B was never attested by the Oath Commissioner and hence the credibility thereof stood demolished. Second contention urged was that the witnesses of the respondent were interested witnesses. Testimony of PW-5, Sunil Kumar was labeled as tainted since he was the brother of the respondent and that of PW-4, H.C. Grover was likewise stated to be tainted as he was alleged to be the perpetrator of the fraud. It was urged that the testimony of Syed Sarfaraz Ahmed, DW-6, concluded that the signatures of the appellant on all the disputed documents were forged.

17. The learned Trial Judge has negated the contentions of the appellant by noting the inconsistent stand adopted by her from time to time evidenced from the line of cross-examination adopted by her. Learned Trial Judge has noted that from being a case of total denial of even the existence of her signatures on the disputed documents, all of which were stated to be forged signatures, the appellant suggested to PW-3 that she was forced and coerced into signing Ex.PW-2/C. Suggestion put to PW-4 was the same i.e. of threat and coercion into signing Ex.PW-2/C, Ex.PW-2/D and Ex.PW-2/E. Not only that, learned Trial Judge has further noted that when she was cross-examined, the appellant took a completely different stand by stating that she had signed on blank papers some of which had affixed thereon revenue stamps.

18. In a nutshell, in view of the contradictory stand taken by the appellant vis--vis her pleadings in the written statement and her statements made on oath as a witness as also a contradiction in her pleadings and the line of cross-examination adopted when witnesses of the respondent were cross- examined a finding has been returned that Ex.PW-2/B to Ex.PW-2/E bore the signatures of the appellant and that the documents were duly drawn up before they were executed.

19. At the hearing of the appeal, learned counsel for the appellant reiterated that there is no evidence on record to establish that the appellant had executed Ex.PW-2/B to Ex.PW-2/E. Learned counsel sought to get over the contradictions in the oral evidence of the appellant vis--vis her pleadings and the conflicting line adopted during cross-examination of the witnesses of the respondent by blaming her counsels at the trial court by urging that the lawyers did so on their own and without any instruction from the appellant. Lastly, counsel urged that relief of specific performance is a discretionary relief and urged that the same may be declined by awarding compensation to the respondent; if this Court were not to agree with the first contention urged by the appellant.

20. Pertaining to the first plea urged, we had repeatedly questioned learned counsel for the appellant whether a ground had been urged in the memorandum of appeal that the counsels for the appellant adopted a contradictory line of cross-examination when witnesses of the respondent were being cross-examined without the instructions of the appellant. Learned counsel could not point out any ground in which said stand was taken. On a perusal of the pleadings of the appellant, her testimony as her own witness and the cross- examination of the witnesses of the respondent reveals that the appellant kept on

changing her stand from that of a complete denial in the written statement of having executed any documents to stating on oath when she was cross-examined that her signatures were obtained on blank papers; followed by another contradictory line adopted by suggesting to PW-3 that her signatures were obtained by force and coercion on Ex.PW-2/C and suggesting to PW-4 that her signatures were obtained on Ex.PW-2/C, Ex.PW-2/D and Ex.PW-2/E by threat and coercion. It has also to be noted that what was the threat extended or in what manner was she coerced has not been brought on record. We note that a very important facet of the evidence has not been noted by the learned Trial Judge, which is fatal to the case of the appellant. The same is her line of cross-examination adopted when the respondent was cross-examined. A suggestion has been put to the respondent that prior to the execution of Ex.PW-2/B at an oral negotiation the deal was settled at Rs.14.7 lakhs. We just do not understand as to what was the appellant doing at the trial. The only logic which we find in the illogical stand adopted by the appellant is to keep on shooting in the dark hoping that some bullet may find the target.

21. It is important to note that the first payment made on 31st December 2003 is by means of three cheques, a fact admitted by the appellant. Her stand that she received the said payment under an oral agreement that she would sell the flat for Rs.17,70,000/- is not acceptable as it runs contrary to the course of ordinary human conduct being that, a buyer would insist on a written acknowledgment recording the purpose for which the payment was made.

22. Though not argued by learned counsel for the appellant, the appellant cannot take any benefit from the testimony of Mayank Goswami, the son of the notary public who had produced a register purportedly maintained by his father which did not record any entry of Ex.PW-2/B being notarized on 31st December 2003. The reason is obvious, the register did not have page numbers. Mayank Goswami admitted that he had no personal knowledge about the register. Surprisingly, he could not even confirm or deny whether the signatures of the notary public on the said document were those or not of his father.

23. The conduct of the respondent shows her readiness and willingness to pay the balance sale consideration and get executed the sale deed in her favour. We note that no submission was made by learned counsel for the appellant on the issue of the respondent not being ready and willing to perform her part of the contract.

24. On the plea that specific performance should be denied as a relief to the respondent we note that no equitable grounds were brought out by learned counsel for the appellant to entitle her for exercise of discretion in her favour. On the contrary, the conduct of the appellant is not above board. She executed the agreement to sell Ex.PW-2/B and the receipt Ex.PW-2/C as M.Chawla and the other documents were executed by her as M.Chaterjee. She falsely deposed in her examination-in-chief that she never signs as M.Chawla, but on sustained cross-examination admitted that she does so. She admitted that when she got her daughter Sanjogta admitted in Manav Sthali School she signed as M.Chawla. She also admitted that in the complaint made by her to the police, Ex.DW-1/PD she signed as Minu Chawla. It is apparent that the appellant whose maiden surname is Chaterjee, after marriage to Om Prakash Chawla adopted the surname of her husband

but for unexplainable reasons sometimes represented herself to be Minu Chawla and sometimes as Minu Chaterjee.

25. Discretion has to be exercised on equitable principles and has to be informed by reason and tempered by logic. The conduct of a party becomes relevant while considering, in equity, whether discretion should be exercised to deny relief which a party is otherwise entitled to in law. We hold that there is no material on record to exercise discretion by denying the relief of specific performance to the respondent.

26. The appeal is dismissed with costs in favour of the respondent and against the appellant.

Sd./-
PRADEEP NANDRAJOG, J.

Sd./-
J.R. MIDHA, J.

December 05, 2008