

A

SANJAY SINGH AND ANR.

v.

CENTRAL HIMALAYAN LAND DEVELOPMENT CO. LTD.

(Civil Appeal No. 1928 of 2019)

B

FEBRUARY 21, 2019

**[UDAY UMESH LALIT AND ASHOK BHUSHAN, JJ.]**

*Suit – Recovery of money – Appellants booked a residential flat whereupon a villa was to be constructed by the respondent – Total consideration for villa was Rs.15,65,000/- – According to appellants they paid all the installments – Thereafter, appellants received demand notice from respondent for payment of balance consideration of Rs. 5,13,850/- towards principal sum and interest amounting to Rs.3,61,460/-, the total being Rs.8,73,556/- – Pursuant thereto, respondent filed a summary suit for recovery of the said amount which was dismissed – In First appeal, High Court condoned the delay of 721 days and directed appellants to deposit Rs. 5,13,850/- in Court, and further directed respondent to handover the possession of the villa to appellant – However, High Court reversed its earlier order and directed to release the amount of Rs.5,13,850/- and the possession of villa back to respondent – On appeal held: There was no reason for the High Court to direct reversal of the situation – Further, there was no satisfactory explanation for condoning delay of 721 days – In the totality of circumstances, High Court erred in condoning delay – Thus, order of the High Court condoning delay set aside and consequently, first appeal also dismissed – Besides that, possession of villa directed to continue in possession of the appellants and amount of Rs.5,13,850/- deposited in the Court to be made over to the respondent along with interest accrued – Delay/Laches.*

E

F

**Allowing the appeal, the Court**

G

**HELD : 1. In the instant case, that the High Court in its order dated 16.04.2018 had sought to bring about a situation where the area of controversy could be minimized and at the same time the possession of the villa could be made over the appellant. Appellant was directed to deposit the balance sale consideration**

H

of Rs.5,13,850/- in the Court and upon same being deposited, the respondent-company to hand over the possession of the Villa. The next order dated 23.05.2018 shows that the appellants had deposited the sum as indicated and the possession was agreed to be handed over by the respondent by 15.07.2018. The possession of the villa was actually handed over. Thereafter, the matter came up before the High Court on 25.07.2018. The High Court accepted the explanation for condonation of delay and condoned the delay of 721 days, subject to payment of costs of Rs.20,000/- to be made over by the respondent to the appellants. The High Court also observed that subject suit since was filed for recovery of money and the same was dismissed and the appeal was against that decree, by an interim order the appellant cannot receive possession of the disputed Villa constructed by respondents. Further, High Court ordered to release the amount deposited back to the respondents along with accrued interest. In the circumstances, the question for consideration is whether the High Court was justified in reversing the situation. In terms of the understanding between the parties as recorded in the earlier orders of the High Court, there was no reason for the High Court to direct reversal of the situation. [Paras 11 and 14][862-BC; 861-A-E; 862-C-D]

2. The delay to the tune of 721 days was condoned by the High Court when there was no satisfactory explanation. There was gross negligence on part of the respondent and the explanation offered in support of the prayer for condonation does not appear to be correct. Taking totality of the circumstances, the delay ought not to have been condoned by the High Court. Therefore, the submission of the appellants is accepted. The order condoning delay is set aside. Consequently, the First Appeal also stands dismissed. [Para 15][862-D-E; F-G]

3. However, considering the developments that have taken place while the appeal was pending in the High Court, it is directed: a) The possession of the villa which was handed over to the appellants in pursuance of the order dated 23.05.2018 shall continue to remain with the appellants and be taken to be in terms of the Agreement entered into between the parties; b) The amount of Rs.5,13,850/- deposited by the appellants in the

A **Registry of the High Court which stands converted into a Fixed Deposit Receipt, upon maturity shall be made over to the respondent along with interest accrued thereon; c) The pending appeal before the State Commission shall be dealt with on its own merits. [Para 16][862-G-H; 863-A-B]**

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1928 of 2019.

From the Judgment and Order dated 25.07.2018 of the High Court of Delhi at New Delhi in Regular First Appeal No. 876 of 2016.

C Rajan K. Chourasia, Adv. for the Appellants.

Rajat Sehgal, Ms. Ritagya Riti Singh, Praveen Rao, Ms. Vandana Anand, Advs. for the Respondent.

The Judgment of the Court was delivered by

**UDAY UMESH LALIT, J.** 1. Leave granted.

D 2. This appeal is directed against the judgment and order dated 25.07.2018 passed by the High Court of Delhi at New Delhi in Regular First Appeal No.876 of 2016.3

E 3. The appellants had booked a residential plot whereupon a villa was to be constructed by the respondent in a project called “Cloud-9 Hill Town” in village Khabrar, Ramgarh, District-Nainital, Uttarakhand. An agreement in that behalf was executed on 14.04.2004 in terms of which the total consideration for the villa was Rs.15,65,000/- and the villa was to be completed within 30 months. Later, sale deed in respect of the plot was registered in favour of the appellants on 14.05.2004. According to F the appellants they had secured loan to the tune of Rs.13,30,000/- from a bank and had paid all the instalments as and when they were due. On or about 03.10.2007 the appellants received a demand notice for payment of balance consideration of Rs.5,13,850/- together with interest @ 24%. The amount of Rs.5,13,850/-was tendered by the appellants on 12.10.2007 but the cheque was returned by the respondent.

G 4. Thereafter, a statement of accounts was prepared by the respondent which reflected outstanding dues to the tune of Rs.5,13,850/- towards principal sum and interest amounting to Rs.3,61,460/-, the total being Rs.8,73,556/-. Soon thereafter, the respondent filed a Summary Suit for recovery of said amount of

H

Rs.8,73,556/-. The Suit was registered as CS No.431/14/2008 on the file of Additional District Judge, Tis Hazari, New Delhi. A

5. A Consumer Complaint was filed by the appellants being CC/110/2008 against the respondent submitting that though the outstanding amount was tendered by the appellants on 18.10.2007, the respondent refused to accept the same unless the principal sum was accompanied with interest @ 24% and that the project was not completed in time as a result of which the appellants were put to loss. It was prayed that the respondent be asked to deliver possession of villa along with all the facilities and accept the balance payment of Rs.5,13,850/-. The respondent contested the claim and submitted that the appellants never paid instalments as per schedule; that there was no delay on part of the respondent; and, therefore, the respondent was justified in demanding interest. B C

6. The complaint was allowed by District Forum-II, New Delhi by order dated 29.04.2010 which directed the respondent to deliver the completed villa to the appellants against the balance payment of Rs.5,13,850/- without any interest and further directed the respondent to pay compensation to the tune of Rs.1,00,000/- to the appellants. The order passed by the District Forum-II is presently pending appeal before the State Commission, New Delhi. D

7. The Civil Suit filed by the respondent was dismissed by Additional District Judge-15 (Central), Tis Hazari Courts, Delhi by his judgment and order dated 30.07.2014. The principal issue framed was whether the respondent was entitled to recovery of Rs.8,73,556/- as alleged? The case put up by the respondent was not accepted by the trial court and rejecting all the contentions of the respondent the suit was dismissed. E F

8. The respondent being aggrieved filed Regular First Appeal No.876 of 2016 in the High Court with an application to condone the delay of 721 days in filing said appeal. The explanation offered in support of condonation of delay was that the then advocate had not informed the respondent about the disposal of suit; that the respondent was, therefore, constrained to lodge a complaint against said advocate before the Bar Council of Delhi, which was pending adjudication and that the respondent ought not to suffer on account of the failure on part of their advocate. The appeal came up before the High Court on 16.04.2018. After going into the rival contentions, the High Court observed: G H

- A “Considering the facts and circumstances of this case, as recorded in the previous orders, where only some part of the total consideration is due and that too the same was tendered by the Respondents but was not accepted by the Appellant Company, it is directed that the balance sale consideration of Rs.5,13,850/-, shall be deposited by the Respondents in this Court within a period of four weeks. Upon the same being deposited, the Appellant Company shall hand over the possession of the Villa for the peaceful occupation and enjoyment of the Respondents. The Appellant Company shall ensure that the Villa would be in liveable condition and shall be complete in all respects.
- B
- C Considering the allegations made against the Company and the status report, which has been handed over by the police station Amar Colony, it is directed that a responsible person from the management of the Appellant Company shall remain present in the Court on the next date of hearing.
- D The question, as to whether the Appellant Company is entitled to interest due to the alleged delay in payment of the principal sum, shall be decided at the time of final hearing of the appeal. Original status report is taken on record.
- E List on 23<sup>rd</sup> May, 2018 for final hearing. Trial court record be requisitioned for the next date of hearing.”
9. The matter was, thereafter, taken up by the High Court on 23.05.2018 when it was observed:
- F “The Respondent is stated to have deposited the money as directed on the last date, with the Registrar General of this Court. The amount shall be kept in a FDR on automatic renewal mode. The possession of the villa has not yet been given by the Appellant. They undertake that the possession of the fully completed villa shall be handed over to the Respondents on 15<sup>th</sup> July, 2018.”
- G 10. As per record, the amount of Rs.5,13,850/- which was stated to be balance payable towards the principal sum, was deposited by the appellants with the Registry of the High Court. The amount was, thereafter, converted into a Fixed Deposit Receipt awaiting final directions in the matter. According to the order dated 23.05.2018, it was undertaken
- H

by the respondent that the villa would be handed over and the possession of the villa was accordingly handed over to the appellants. A

11. Thereafter, the matter came up before the High Court on 25.07.2018. The High Court accepted the explanation for condonation of delay and condoned the delay of 721 days, subject to payment of costs of Rs.20,000/- to be made over by the respondent to the appellants. B  
The High Court also observed:-

“6. The subject suit was a suit for recovery of moneys filed by the appellant/plaintiff. For the settlement, the appellant/plaintiff was directed to hand over the villa constructed for the benefit of the respondents/defendants pursuant to an interim order passed by a learned Single Judge of this Court and whereby respondents also deposited a sum of Rs.5,00,000/- in this Court. There cannot be an interim order in a proceeding which is beyond the scope of main proceedings. The subject suit since was a suit filed by the plaintiff for recovery of moneys which has been dismissed and the present appeal is against that decree, by an interim order the respondents cannot receive possession of the disputed flat/villa constructed by the appellant in Cloud-9, Hill Town, Village Khabrar, Ram Garh, District Nainital, Uttarakhand. Therefore, it is ordered that the amount deposited by the respondents in this Court be released back to the respondents along with accrued interest thereon within a period of four weeks from today and simultaneously or before the respondents will hand over possession back of the subject villa received by the respondents from the appellant pursuant to interim orders in this appeal to the appellants.” C  
D  
E

The First Appeal was admitted and directed to be listed in due course as per the year of its seniority. F

12. The aforesaid order dated 25.07.2018 is now under challenge. While issuing notice, this Court had stayed the operation of said order.

13. We have perused the record and considered rival submissions advanced by learned counsel for both the sides. The following features are clear:- G

a) The balance sum of Rs.5,13,850/- which was supposed to be due from the appellants was deposited by the appellants.

H

A           b) In terms of the order dated 23.05.2018 the amount so deposited stands converted into a Fixed Deposit Receipt.

          c) In terms of the order dated 23.05.2018 and as undertaken by the respondent, possession of the villa was made over to the appellants.

B           14. In the instant case, that the High Court in its order dated 16.04.2018 had sought to bring about a situation where the area of controversy could be minimized and at the same time the possession of the villa could be made over the appellant. The next order dated 23.05.2018 shows that the appellants had deposited the sum as indicated and the possession was agreed to be handed over by the respondent by 15.07.2018. The possession of the villa was actually handed over. In the circumstances, the question for our consideration is whether the High Court was justified in reversing the situation. According to us, the situation having been brought about in terms of the understanding between the parties as recorded in the earlier orders of the High Court, there was no reason for the High Court to direct reversal of the situation.

D           15. But, what is more striking is that the delay to the tune of 721 days was condoned by the High Court when there was no satisfactory explanation. In our view, there was gross negligence on part of the respondent and the explanation offered in support of the prayer for condonation does not appear to be correct. This is evident from the fact that no effective steps were taken to pursue the complaint which was lodged against the then advocate. In the petition for special leave, it was asserted that the complaint against the Advocate was not being proceeded with and the respondent had remained absent on the relevant date. Said assertion was not answered satisfactorily in the affidavit in reply filed in this Court. Taking totality of the circumstances, in our view the delay ought not to have been condoned by the High Court. We, therefore, accept the submission of the appellants and set aside the order condoning delay. Consequently, the First Appeal also stands dismissed.

F           16. However, considering the developments that have taken place while the appeal was pending in the High Court, we pass following directions:-

G           a) The possession of the villa which was handed over to the appellants in pursuance of the order dated 23.05.2018 shall continue

H

to remain with the appellants and be taken to be in terms of the Agreement entered into between the parties. A

b) The amount of Rs.5,13,850/- deposited by the appellants in the Registry of the High Court which stands converted into a Fixed Deposit Receipt, upon maturity shall be made over to the respondent along with interest accrued thereon. B

c) The pending appeal before the State Commission shall be dealt with on its own merits.

17. With the aforesaid directions this appeal is allowed. No costs.

Ankit Gyan

Appeal allowed.