

M/S Ashima Securities Private Limited vs Municipal Corporation Of Delhi Ac+ on 2 September, 2022

Author: Neena Bansal Krishna

Bench: Neena Bansal Krishna

\$~25

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(OS) 1713/2007

M/S ASHIMA SECURITIES PRIVATE LIMITED Plaintiff
Through: Mr. Vatsl Kumar & Mr. Paavan
Gohari, Advocates

versus

MUNICIPAL CORPORATION OF DELHI AC+ Defendant
Through: Ms. Madhur Tewatia & Mr. Adhirat
Singh, Advocates

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA
ORDER

% 02.09.2022 I.A. 17623/2019(U/Order VI Rule 17 r/w Section 151 of CPC, 1908)

1. The plaintiff has filed an application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC, 1908") seeking amendment of the plaint.
2. The plaintiff has stated in the application that it had filed the Suit for Specific Performance, Permanent Injunction, Declaration and Mandatory Injunction.
3. The plaintiff had deposited a sum of Rs. 2,31,30,919/- with the defendant in respect of Property Open Air Restaurant, Minto Bridge, Minto Road, New Delhi (hereinafter referred to as "subject property") as conversion charges vide Letter dated 30th July, 2007. The requisite affidavit was also filed that it was ready and willing to deposit any arrears or enhanced cost of land in respect of subject property.
4. On payment of the requisite amount under the Policy taken out by the defendant and on complying with the terms of the Policy and Letters aforesaid, the plaintiff came in possession of the subject property in part performance of the Agreements. The subject property, thus, vested in the plaintiff absolutely awaiting execution of the Conveyance Deed by the defendant. The amount so deposited has never been returned. However, due to typographical error and inadvertence, though the amount of payment made by the plaintiff has been mentioned in the plaint, no corresponding relief of damages has been sought by the plaintiff in the prayer clause. Hence, a prayer is made that the plaintiff may be allowed to add the additional prayer in the following manner:

"(e) Pass a decree in favour of the plaintiff and against the defendant directing the Defendant to return the amount of Rs.

2,31,30,919/- along with interest".

5. The defendant in its Reply has taken the preliminary objection that the present application is barred by the law of limitation as the claim is time barred. Further, this amendment cannot be allowed as per the proviso to Order VI Rule 17 of CPC, 1908 inasmuch as amendment cannot be allowed once the trial has commenced unless the Court comes to the conclusion that in spite of the due diligence, the party could not have raised the matter. The plaintiff has failed to show that despite due diligence, the plaintiff could not have raised the matter before the commencement of the trial and the present application is liable to be dismissed.

6. It is also argued by the learned counsel for the defendant that the possession of the licensed property has already been recovered by the defendant and no cause of action for getting the subject property converted into lease hold or into freehold vests in the plaintiff.

7. Learned counsel for the defendant has placed reliance on the decision in P.A. Ahammed Ibrahim vs. Food Corporation of India (1999) 7 SCC 39, wherein it was observed that the amendment which introduces a totally new cause of action and changes the nature of the Suit which is inconsistent with the prayer made in the application must not be allowed, especially when the amount alleged to be recovered is barred by period of limitation.

8. The present application is a gross abuse of the process of law and is liable to be dismissed. A prayer is, therefore, made that the application may be dismissed.

9. Submissions heard.

10. To understand the nature of amendment sought by way of this application, it would be pertinent to refer to the contents of the plaint. The plaintiff has filed a Suit for Specific Performance. According to the plaintiff it was granted a license vide Agreements dated 08th January, 2002, for running the subject property and the possession was handed over by the defendant on 28th February, 2002, when the plaintiff started its business. The plaintiff was remitting its license fees religiously as per the terms of the Agreements.

11. The plaintiff had further asserted that in 1978, Ministry of Urban Development and Poverty Alleviation (Directorate of Estates) formulated a Policy and agreed to confer ownership rights to the occupiers/allottees in the market after charging a percentage between 50% to 80% of the premium of the land at the pre-determined commercial rates notified and existing on the date of transfer. Besides this, the annual ground @ 2.5% of the premium/cost of the land calculated at the existing land rates was also payable. In the year 2000, the Central Cabinet in modification of its earlier Policy, agreed to convert the same into freehold property in the hands of the allottees/lessees/occupiers on payment of 100% premium of commercial land rates. By various resolutions, the defendant agreed and held out that the licensee/rented property in the hands of

occupiers etc. will be first converted into leasehold and then into freehold as per the Conversion Policy. The plaintiff accordingly deposited 2,31,30,919/- for seeking conversion. The Land and Estate Department of the defendants also gave „No Objection Certificate to the plaintiff, in case the plaintiff intended to mortgage the suit property.

12. The plaintiff vide their Letters dated 30.07.2007 addressed to DC (Land and Estate Department), MCD requested the defendants to execute the Lease Deed in respect of the aforesaid property and also along with Letters, the plaintiff also submitted its sworn affidavit/undertaking to deposit any arrears or enhanced land cost in respect of the subject property in future by the MCD in regard to conversion of freehold. The defendant has not issued any notice. The plaintiff received Letters dated 02nd August, 2007 from the defendant, whereby the defendant informed that it transferred all the records pertaining to the subject property in question back to Remunerative Projects Cell (R.P. Cell) for further action.

13. It was asserted that having received the entire consideration amount for conversion of licence into lease hold in respect of the subject property, the defendant was liable to grant the lease rights for which the entire conversion money had been paid. It is further submitted that on 30th August, 2007, some persons claiming to be the officials of the defendant's organization, without informing the plaintiff, started preparing the details of the subject property and inventory of the articles. It is claimed in the Suit that there was a valid and legal Contract between the parties for conversion of the licence relating to lease hold rights and to confer ownership rights on the plaintiff in respect of the subject property. The plaintiff has already performed their part of the Contract and hence made a prayer for passing a Decree for specific performance in favour of the plaintiff against the defendant directing them to convert licence into freehold and to convert ownership rights in respect of the subject property.

14. By way of present application, the plaintiff has sought an additional relief on the basis of the pleadings already made that in the alternative, it may be allowed to seek recovery of the amount along with the interest so deposited with the defendant.

15. Order VI Rule 17 of CPC, 1908 was amended in the year 2002, wherein the provision of Order VI Rule 17 of CPC, 1908 has been made stringent, it has been provided that no amendment to the pleadings can be allowed unless it is shown that the same could not have been incorporated despite due diligence. Undeniably, the trial has already commenced and the evidence is being led by the plaintiff and the only explanation or reason given in the application is that due to inadvertence, the alternate relief could not be claimed.

16. In this regard, it may be observed that no other reason except inadvertence has been pleaded by the plaintiff, but the amendment sought is not a new case in any way but is an alternate prayer for which the facts were already pleaded in the plaint.

17. In this regard, it would be also pertinent to refer to Section 22 of the Specific Relief Act, 1963 which reads as under:

"Section 22 - Power to grant relief for possession, partition, refund of earnest money, etc. -

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for -

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit or 1(made by) him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed: Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause

(b) of sub-section (1) shall be without prejudice to its powers to award compensation under Section 21."

18. The proviso to Section 22(2) of the Specific Relief Act, 1963 clearly provides that where the plaintiff has not claimed any relief including refund of money in the plaint, the Court shall, at any stage, allow him to amend the plaint at such terms as may be just for including a claim for such relief.

19. In the present case, the plaintiff has already made an averment that despite having paid the entire consideration amount and having expressed its willingness and readiness to comply with any other requirement which may be directed by the defendant, the subject property has not been made freehold. The relief in the alternative for recovery of money cannot be denied in view of Section 22 of the Specific Relief Act, 1963.

20. Learned counsel for the defendant has further contested the proposed amendment on the ground that it is barred by limitation. The present Suit has been filed in the year 2007, while the amendment is sought to be made in the year 2022 which is hopelessly barred by limitation. In this regard, a reference may be made to Rukhsana Begum vs. Abdul Aziz 253 (2018) DLT 119, wherein it was observed that the cause of action accrues in favour of the plaintiff only when the earlier Suit for specific performance and damages has been dismissed and the Suit for recovery of the amount paid under the Agreement can be filed within three years of the dismissal of the earlier Suit.

21. Reference may also be made to the decision of the Hon ble Supreme Court in Pankaja & Anr. Vs. Yellapa (D) by LRs & Ors. AIR 2004 SC 4102, wherein it was held that the amendment sought after substantial delay and even if barred by limitation can be allowed if that sub-serves the cause of justice and avoids further litigation. If the fact details are already mentioned in the plaint, it cannot be asserted that by way of an amendment a new cause of action is sought to be introduced.

22. In Prema Devi Rastogi vs.Bimla Devi Rastogi MANU/DE/2429/2008, it was held that the legal proposition is that the court should allow amendment which does not alter the nature of the Suit. If by way of amendment, the plaintiff is not introducing a new case but is merely bringing on record what was implied in the plaint, then such amendment must be allowed. Insofar as the plea of the claim being barred by the limitation, the defendant is at liberty to agitate the same in their Written Statement.

23. It may also be observed that at the stage of considering the application for amendment, the Court essentially has to consider whether the amendment is necessary for complete and final adjudication of the dispute and is necessitated by the facts claimed by the parties. The defendant is not debarred from taking the plea of the relief being barred by limitation, in its Written Statement. In view of above, the present application is allowed.

24. Let amended plaint be filed within three weeks to which a Written Statement, if any, be filed by the defendant within three weeks thereafter.

25. Application is disposed of.

CS(OS) 1713/2007 List before the Joint Registrar for completion of pleadings and admission/denial of the documents on 28th November, 2022.

NEENA BANSAL KRISHNA, J SEPTEMBER 2, 2022 S.Sharma