

Delhi High Court

J.C. Dey vs D.C. Banerjee on 16 December, 2009

Author: S.L.Bhayana

HIGH COURT OF DELHI: NEW DELHI

RFA No. 540/2005

Judgment reserved on: 11.11.2009

Judgment pronounced on: 16.12.2009

J.C. DEY

..... APPELLANT

Through: Mr. P.K. Mitra, Adv.

Versus

D.C. BANERJEE

..... RESPONDENT

Through: Ms. Indrani Ghosh, Adv.

CORAM:

HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the digest or not?

Yes S.L. BHAYANA, J The present appeal has arisen out of the judgment passed by the Additional District Judge, Delhi in Suit No. 174/03/98 on 22.1.2005, wherein the learned ADJ has dismissed the suit of the plaintiff/appellant with costs of Rs.50,000/-

2. The brief facts of the case as submitted by the appellant are that the respondent/defendant has entered into an agreement to sell the suit property bearing no. E.960, Chittaranjan Park, New Delhi to the plaintiff/appellant on 11.7.1995 for consideration of Rs.55 lacs. The appellant paid a sum of Rs.3 lacs as advance amount to the defendant vide cheque nos. 036737 dated 11.1.1996, 03642 dated 06.2.1996 and 036745 dated 02.3.1996 for Rs.1 lac each. It is also urged on behalf of the appellant that a sum of Rs.15 lacs in cash was also paid by the plaintiff to the defendant on different occasions vide proper receipts duly signed by the defendant.

3. It is further the case of the appellant that he deposited a sum of Rs.24,974/- vide pay order no. 180206 dated 24.7.1996 of Punjab National Bank, Alaknanda, Kalkaji, New Delhi with L&DO, a competent authority for converting the suit property from lease hold to free hold. It is further

submitted that after entering into agreement to sell with the respondent, the appellant further entered into another agreement to sell with one Vinod Chawla, son of Mr. B.R. Chawla, r/o 177, Golf Links, New Delhi on 13.9.1996 whereby he agreed to sell the suit property to Sh. Vinod Chawla.

4. It is also the case of the appellant that he cancelled the agreement to sell with Sh. Vinod Chawla vide cancellation deed dated 24.2.1997. After cancellation of agreement to sell and purchase the property dated 11.7.1995, the appellant introduced Sh. Vinod Chawla to the respondent and the respondent entered into fresh agreement to sell the suit property with Sh. Vinod Chawla. It is further submitted that a sum of Rs.3 lacs which the respondent received from the appellant as advance amount on 11.7.1995 was adjusted against the cheque no. 097192 dated 13.9.1996. It is further submitted on behalf of the appellant that he paid a sum of Rs.18,24,974/- to the respondent and out of that amount of Rs.18,24,974/- only Rs.3 lacs was adjusted by the respondent and therefore the respondent was liable to pay back a sum of Rs.15,24,794/- to the appellant but the respondent has failed to make payment inspite of repeated demands made by the appellant. Ultimately, the appellant served a legal notice on the respondent on 18.5.1997 calling upon him to make payment of Rs.15,24,794/-. But the respondent has again failed to make payment despite a legal notice and therefore the appellant filed the suit against the respondent/defendant and prayed in the suit that a decree for a sum of Rs.15,24,794/- with costs and interest be passed in favour of the appellant/plaintiff and against the respondent/defendant.

5. In the written statement filed by the respondent/defendant, the respondent/defendant admitted that he entered into an agreement to sell the suit property with the plaintiff for a consideration of Rs.55 lacs. He has further admitted that he received only a sum of Rs.3 lacs from the appellant/plaintiff against three cheques of Rs.1 lac each. But the respondent/defendant denied that he received a sum of Rs.15 lacs in cash from the appellant/plaintiff at any point of time. He also denied that he was liable to pay an amount of Rs.24,974/- deposited by the plaintiff with L&DO for converting the suit property from lease hold to free hold. It is the case of the respondent/defendant that the appellant/plaintiff has already received the said amount from Sh. Vinod Chawla prior to cancellation of agreement to sell dated 11.7.1995.

6. It is further the case of the respondent that the appellant has entered into an agreement to sell the suit property with Sh. Vinod Chawla on 13.9.1996 for higher amount of Rs.76 lacs and that the appellant made a huge profit of Rs.22 lacs by signing the agreement to sell of suit property in favour of Sh. Vinod Chawla. The respondent has further stated that the agreement to sell between the parties was cancelled on 24.2.1997. He further admitted that the agreement to sell between the appellant and Sh. Vinod Chawla was also cancelled on the same date.

7. It is further a case of the respondent that the appellant has received a profit of Rs.22 lacs from this transaction with Sh. Vinod Chawla and after receiving the profit, the appellant cancelled the agreement to sell with Sh. Vinod Chawla. It is also the case of the respondent that the appellant being a property dealer would never have cancelled the agreement with the respondent without receiving the amount, if any, due from the respondent and would not sign „no lien agreement against the suit property if any amount was due from the respondent. It is further submitted on behalf of the respondent that since in the Cancellation Deed it is categorically mentioned that the

second party/appellant has no lien against the suit property and no claim whatsoever from the first party/respondent against the suit property, so the question of payment of Rs.15 lacs, which was never paid by the appellant to the respondent does not arise.

8. From the pleadings of both the parties, the learned ADJ framed following issues:

i. "Whether the plaintiff paid a sum of Rs.15 lacs to the defendant in cash, as alleged in para no. 4 of the plaint? OPP ii. Whether the plaintiff made a profit of Rs.22 lacs as alleged in preliminary objection no. 4 in the Written Statement, if so, to what effect? OPD iii. To what amount if any is the plaintiff entitled from the defendant? OPP iv. Relief."

9. Both the parties filed their affidavits by way of evidence and cross-examined their witnesses in support of the case. The affidavit filed by the plaintiff/appellant by way of evidence is Ex. PW-1 wherein he has stated that out of Rs.18,24,974/-, Rs.3 lacs was paid by him against three cheques each and Rs.15 lacs was paid by him to the respondent in cash on different occasions against duly signed receipts. But the appellant has failed to produce even a single receipt showing that a sum of Rs.15 lacs was paid by him to the respondent nor produced any other proof for the same. The appellant admitted in his cross-examination that he has not shown the payment made in cash in his income-tax returns. The appellant further admitted that Rs.3 lacs which was paid by way of cheques to the respondent stood adjusted with the respondent when he entered into an agreement to sell with Sh. Vinod Chawla. It was also admitted that Rs.24,974/- was deposited by him with L&DO for conversion of suit property from lease hold to free hold and this fact was also mentioned in the agreement to sell between the parties. He further admitted that he has taken Rs.17 lacs in cash from Sh. Vinod Chawla and executed the receipt (Ex. PW-1/3).

10. The respondent/defendant was also cross-examined as DW-1 and filed his affidavit by way of affidavit wherein he has admitted receiving of Rs.3 lacs as advance payment from the appellant/plaintiff by way of post dated cheques of Rs.1 lac each. He deposed that Rs.3 lacs which was paid by way of three cheques to the respondent stood adjusted with the respondent when he entered into an agreement to sell with Sh. Vinod Chawla. He further deposed that Sh. Vinod Chawla paid Rs.22 lacs in cash to the appellant/plaintiff but he handed over a receipt of payment only for Rs.17 lacs, which is also admitted by the appellant/plaintiff. He has further deposed that Sh. Vinod Chawla paid Rs.22 lacs in cash to the appellant/plaintiff in his presence. The respondent/defendant has denied the fact that the appellant/plaintiff paid Rs.15 lacs in cash to him at any point of time. Learned counsel for the respondent hence denies that the appellant is entitled for any recovery of Rs.15 lacs from the respondent.

11. I have heard the arguments from learned counsels for both the parties and perused the records carefully. I have also gone through the affidavit filed by the appellant as Ex.PW-1 by way of evidence before the Trial Court and also his cross-examination. The appellant in his cross-examination has conceded that Rs.3 lacs paid by him to the respondent by way of three cheques stood adjusted when the respondent entered into an agreement to sell the suit property with Sh. Vinod Chawla and those Rs.3 lacs are no more payable by the respondent to the appellant. The appellant has also admitted in his cross-examination that he cannot produce any cash receipts duly signed by the respondent to

prove that Rs.15 lacs was paid by him to the respondent. He has also admitted in his cross-examination that he has not shown the said payment of Rs.15 lacs in his income-tax returns. It has also been admitted by the appellant in his cross-examination that he has no other documents to prove that Rs.15 lacs was paid by him to the respondent. The appellant further admitted in his cross-examination that he entered into an agreement to sell the suit property with Sh. Vinod Chawla for a consideration amount of Rs.76 lacs and that he took Rs.17 lacs in cash from him and executed the receipt as Ex.PW-1/D-3 and rest of the amount was paid by way of cheques. He has also admitted that he had cancelled the agreement to sell the suit property with Sh. Vinod Chawla but he earned a profit of Rs.17 lacs through this deal from Sh. Vinod Chawla.

12. The appellant has further conceded in his cross-examination that the agreement to sell the suit property between the appellant and the respondent stood cancelled on 24.2.1997 vide Deed of Cancellation Ex. PW1/D-4 and in the said cancellation deed, he has agreed that he would have no lien/claim of any kind whatsoever in the suit property and assured the respondent that he is free to execute any agreement to sell or any other agreement of the property in question with any person whom he desires. The relevant clause appeared in the cancellation deed is given as under:

"Whereas the Second Party and the First Party could not follow and fulfill the terms of the said agreement, mutually agreed to cancel this agreement to sell and purchase on this day February, 1997. Hereafter the second party has no lien claim of any kind whatsoever on the said property assured to the first party, that he is free to execute any agreement to sale or any other agreement of the property No. E-960, C.R. Park, New Delhi with any person/persons, who he wish."

13. In the said Cancellation Deed Ex. PW1/D-4, it is also mentioned that the amount of Rs.3 lacs was paid by the appellant to the respondent in advance stand adjusted, which finds mention in the cancellation deed at the relevant para as under:

"Whereas the second party introduced a new purchaser Mr. Vinod Chawla, S/o Late Sh. B.R. Chawla, R/o 177, Golf Links, New Delhi and requested to the first party to enter an agreement to sell with Sh. Vinod Chawla and adjust the advance of Rs.3,00,000/- paid by him vide Ch. No. 097142 dt. 13.9.96 in sale consideration agreed with Sh. Vinod Chawla."

14. I have gone through the Cancellation Deed Ex. PW1/D-4 and from this deed of cancellation, it is clear that Rs.3 lacs paid in advance by the appellant to the respondent stood adjusted. It is also clear in the cancellation deed that the appellant had categorically mentioned that he had no lien/claim of any kind whatsoever against the property and he declared the respondent free to enter into an agreement to sell the suit property with any third person or a person of his choice, which means that all the claims against the said property stood resolved and satisfied so far as the appellant is concerned. The appellant has willingly abandoned all his claims against the respondent qua the suit property by signing the deed of cancellation and even the amount of Rs.15 lacs which was paid by him to the respondent in cash has not been proved by any cogent evidence produced by the appellant. So far as the claim of the appellant with regard to sum of Rs.24,974/- is concerned, this

claim also comes to an end because he has signed the deed of cancellation in which he has mentioned no lien/claim of any kind whatsoever against the suit property.

15. I have gone through the agreement to sell entered into and appellant and the respondent dated. 11.7.1995 Ex. PW1/D-1 and the said agreement finds mention that Sh. J.C. Dey, appellant (second party) will bear all expenses on executions and registration of documents, stamp duty, court fee, municipal taxes, registration fees etc. and charges for conversion of the property from lease hold to free hold. The same finds mention in para 3 of Agreement to Sell dated 11.7.1995 Ex. PW1/D-1, which reads as under:

"However it is specifically agreed between the parties hereto that all the expenses on executions and registered of the said deeds/documents i.e. stamp duty, court fee, municipal taxes, registration fee etc., and charges for conversion of the said property from lease hold to free hold shall be borne and paid by the second party."

16. In the said agreement, the appellant had explicitly stated that he will bear all expenses/charges for conversion of suit property from lease hold to free hold. He has also admitted in his evidence that the amount of Rs.24,974/- was deposited by him L&DO for converting the suit property from lease hold to free hold. In view of the agreement to sell between the parties and in view of the clause 3 of Agreement to Sell dated 11.7.1995, the appellant had deposited the amount of Rs.24,974/- with L&DO and not with the respondent as claimed by the appellant in this appeal. Moreover, the appellant has relinquished all his liens/claims of any kind whatsoever against the suit property while signing the Cancellation Deed dated 24.2.1997.

17. Keeping in view the discussions made above, I find no merit in the present appeal and the same is therefore dismissed.

18. No order as to costs.

S.L.BHAYANA, J December 16, 2009 KA