

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment Reserved on : 4<sup>th</sup> August, 2022**  
**Judgment Delivered on : 17<sup>th</sup> August, 2022**

+ **CS(COMM) 70/2022**

G. G. CONSTRUCTIONS PVT. LTD. .... Plaintiff  
Through: Mr. Lall Taksh Joshi, Advocate.

versus

BIKRAMJIT SINGH & ORS. .... Defendants  
Through: Mr. Akshay Makhija, Senior  
Advocate with Mr. Harkirat Singh,  
Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE AMIT BANSAL**

% **ORDER**  
**04.08.2022**

**I.A. 1534/2022(O-XXXIX R-1 & 2 of CPC)**

1. By way of the present judgement, I shall decide the application filed on behalf of the plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 (CPC) seeking interim injunction to restrain the defendants from creating third party rights in respect of 500 square feet of the ground floor and 2,000 square feet of the basement and the undivided share in the land of Plot No. 8E, Rani Jhansi Road, Jhandewalan Extension, New Delhi admeasuring 597 square yards along with the building standing thereon admeasuring 16,000 square feet (suit property).

2. Notice in this application was issued on 20<sup>th</sup> January, 2022 and was accepted in Court by the counsel appearing on behalf of the defendants.
3. Subsequently, vide order dated 12<sup>th</sup> April, 2022, amendment application filed on behalf of the plaintiff was allowed and the amended plaint was taken on record. Written statement has been filed on behalf of the defendants.
4. The present suit was filed seeking specific performance of the Agreement to Sell dated 15<sup>th</sup> July, 2008 (Agreement to Sell) in respect of the suit property.
5. Brief facts leading to the filing of the present suit are as under:
  - i. The plaintiff entered into an Agreement to Sell with the defendants no.1 to 4 and Late Sh. Tejvir Singh, predecessor-in-interest of the defendants no.5 to 8 in respect of the suit property.
  - ii. In terms of the Agreement to Sell, the total consideration fixed was Rs.1,80,00,000/-, out of which Rs.40,00,000/- was paid at the time of signing of the agreement.
  - iii. The second payment of Rs.50,00,000/- was to be paid on issuance of settlement letter by the Punjab & Sind Bank and balance amount of Rs. 90,00,000/- was payable upon removal of lien of Punjab & Sind Bank on the said property by the defendants with the conveyance deed being simultaneously executed and registered. The said lien of Punjab & Sind Bank on the suit property was duly acknowledged in the Agreement to Sell.
  - iv. On 4<sup>th</sup> November, 2008, Late Sh. Tejvir Singh, on behalf of himself and the defendants no.1 to 4, executed four Lease Agreements with the plaintiff in respect of different portions of the entire property, being Plot No. 8E, Rani Jhansi Road, Jhandewalan Extension, New Delhi.

v. The plaintiff came into possession of the aforesaid portions of the property (rented premises) by way of the Lease Agreements being executed and continued to be in possession.

vi. Simultaneously, Maintenance Agreements were also executed between the parties in respect of the rented premises.

vii. An e-mail dated 18<sup>th</sup> November, 2020 was written by the defendant no.1 to the plaintiff in which a settlement letter dated 13<sup>th</sup> December, 2018 issued by Punjab & Sind Bank was attached. The said e-mail was immediately replied to by the plaintiff on 19<sup>th</sup> November, 2020, requesting the defendants to obtain NOC as per the conditions of the said settlement letter. There was no response from the defendants.

viii. Thereafter, the plaintiff came to know of the order dated 15<sup>th</sup> September, 2021 passed by the DRT, in terms of which the matter had been settled between the defendants and the Punjab & Sindh Bank.

ix. An e-mail dated 17<sup>th</sup> November, 2021 was written by the defendant no.6 to the plaintiff, wherein it was stated that the defendant no.1 is working on a solution and would visit India in February, 2022 and requested the plaintiff to wait till then. This was also confirmed by the defendant no.1 vide e-mail dated 18<sup>th</sup> November, 2021 addressed to the plaintiff.

x. A legal notice dated 23<sup>rd</sup> November, 2021 was also issued by the plaintiff, calling upon the defendants for specific performance of the Agreement to Sell. However, no response was received from the defendants.

6. The following submissions have been advanced on behalf of the plaintiff:

i. A sum of Rs.10,00,000/- was paid on 6<sup>th</sup> March, 2010 and Rs.40,00,000/- was paid on 5<sup>th</sup> April, 2010 by the plaintiff to the defendants

towards the second payment under the Agreement to Sell. In this regard, reliance is placed on the Ledger Account of the plaintiff, bank statement and the RTGS details filed by the plaintiff.

iii. The plaintiff has, at all points of time, been ready and willing to perform its obligations under the Agreement to Sell. In fact, it is the defendants who took a long time in clearing the lien of the Punjab & Sind Bank and therefore, the sale deed could not be executed earlier. Reliance in this regard is placed on the judgment of the Supreme Court in ***Panchanan Dhara v. Monmatha Nath Maity***, (2006) 5 SCC 340, wherein it has been held that a vendor cannot be permitted to take advantage of his own wrong in not complying with its obligations under the Agreement to Sell.

iv. The plaintiff was, throughout, following up with Late Sh. Tejvir Singh, to know about the status of the lien of Punjab & Sind Bank being removed from the suit property so that conveyance could be executed. Sh. Tejvir Singh expired on 28<sup>th</sup> September, 2020. The aforesaid lien of Punjab & Sind Bank was removed only on 15<sup>th</sup> September, 2021, in terms of the order passed by the Debt Recovery Tribunal-I (DRT). Immediately thereafter, the plaintiff called upon the defendants to perform the agreement.

7. *Per contra*, the following submissions have been advanced on behalf of the defendants:

i. The Agreement to Sell is incapable of being enforced as the said agreement fails to identify the area of 500 square feet of the ground floor and 2000 square feet of the basement, which is the subject matter of the said agreement.

ii. The Agreement to Sell was mutually terminated in the year 2016.

iii. Pursuant to the cancellation/termination of the Agreement to Sell, the amount of Rs.40,00,000/- paid by the plaintiff in 2008 towards the Agreement to Sell, was to be adjusted towards enhanced monthly rent and monthly maintenance charges payable under the lease/maintenance agreements.

iv. The amounts of Rs.10,00,000/- and 40,00,000/- paid by the plaintiff in 2010 were payments towards enhanced rent, under the Lease Agreements and Maintenance Agreements and not under the present Agreement to Sell.

v. Plaintiff has failed to show his readiness and willingness to perform its obligation under the Agreement to Sell. The plaintiff maintained complete silence from year 2008, when the Agreement to Sell was executed, till 2020. Reliance is placed on the judgment in *U.N. Krishnamurthy v. A.M. Krishnamurthy*, (2022) SCC OnLine SC 840 to submit that the prolonged silence on account of the plaintiff shows lack of willingness on the part of the plaintiff and therefore, no specific performance of the Agreement to Sell can be ordered at this stage.

vi. From the time the Agreement to Sell was executed in 2008, there has been an exponential rise in the market price of the suit property over a period of fourteen years and now, the suit property is valued at about Rs.9,00,00,000/-. Therefore, the said Agreement cannot be enforced at this stage.

vii. The Lease Agreements and the Maintenance Agreements were terminated by the defendants vide notice dated 23<sup>rd</sup> May, 2022.

8. I have considered the rival submissions and examined the record of the case.

9. At the outset, it may be useful to refer to the relevant clauses of the said Agreement to Sell, the execution of which is admitted by both sides:

“1. The purchaser has on the faith and the representations made by the Vendors agreed to enter into this Agreement to Sell for the purchase of the said Saleable Premises along with the rights as more particularly described in the Second Schedule hereunder written, **subject to the Vendors removing the alleged lien of Punjab & Sind Bank on the said Property on the payment by the Purchaser to the Vendors as mentioned in Para No.2 hereinafter mentioned.**

2. The Purchaser have this day paid the vendors a sum aggregating to Rs.40,00,000/- (Rupees Forth Lakhs only), the receipt of which the Vendors do and hereby acknowledge. **The second payment of Rs.50,00,000/- (Rupees Fifty Lakhs only) to be paid on issuance of settlement letter with Punjab & Sind Bank within the period as mentioned in the settlement letter of Punjab & Sind Bank.**

**The Remaining Balance of Rs.90,00,000 (Rupees Ninety Lakhs only) shall be payable within 90 days of removal of alleged lien of Punjab & Sind Bank on the said Property and simultaneously with the execution and registration of Deed of Conveyance for the said Saleable Premises in favor of the Purchaser by the Vendors.**

Note:-Payments made to the Vendors should be made in the joint bank account of Tejvirsingh and Jaspal Singh.

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5. If, in spite of the Purchaser's readiness and willingness to complete transaction of the sale of the said Saleable Premises, the Vendors fails to complete the sale within the period of this agreement, then the Purchaser shall be entitled to get Sale Deed of the said Saleable Premises made in its favour through Court at the cost of the Vendors.

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12. *The Vendors agree that the Agreements signed by them with the Group Companies of the Purchaser (i.e. CMS Computers Ltd. and CMS Securitas Ltd.) for taking parts of the said Property on Rent, will not be terminated during their respective tenures.*

13. *Both the parties are entitled for the specific performance of this Agreement.”*

10. It is not disputed that the sum of Rs.40,00,000/- was received by the defendants from the plaintiff in terms of Clause 2 of the Agreement to Sell. It is also not disputed that a sum of Rs.50,00,000/- was paid by the plaintiff to the defendants in terms of Clause 2 of the Agreement to Sell, though the defendants deny that the same was under the said agreement. However, except for bald averments, nothing has been placed on record on behalf of the defendants to show that the aforesaid amount of Rs.50,00,000/- was paid towards shortfall of rent/maintenance under the Lease Agreements/Maintenance Agreements and not under the Agreement to Sell. Therefore, at this *prima facie* stage, I am of the view that the aforesaid amount of Rs.50,00,000/- was paid as second payment in terms of Clause 2 of the Agreement to Sell.

11. The Agreement to Sell clearly records that there was an existing lien of the Punjab & Sind Bank on the suit property. It was the obligation of the defendants to remove the said lien of Punjab & Sind Bank and thereafter, execute the conveyance deed for the sale of the suit property in favour of the plaintiff.

12. It is the case of the plaintiff that they were, throughout, in touch with Sh. Tejvir Singh, with regard to the lien of the suit property being removed. Sh. Tejvir Singh expired on 28<sup>th</sup> September, 2020. It was only on 18<sup>th</sup>

November, 2020 that the defendant no.1 sent an e-mail to the plaintiff attaching therewith the settlement letter dated 13<sup>th</sup> December, 2018 issued by the Punjab & Sind Bank giving the terms of the settlement. The said e-mail was promptly replied to by the plaintiff on 19<sup>th</sup> November, 2020, calling upon the defendants to fulfill the conditions mentioned in the said letter so that the NOC could be obtained from the Bank for the sale of the suit property. If the Agreement to Sell had been mutually terminated in 2016, as is the case of the defendants, it defies logic as to why the defendants would send the settlement letter of Punjab & Sind Bank to the plaintiff in November, 2020.

13. In the e-mails dated 17<sup>th</sup> November, 2021 and 18<sup>th</sup> November, 2021 written by the defendants to the plaintiff, it is clearly noted that the defendants are looking for a solution and a mutual settlement with the plaintiff. There is no mention in the said e-mails about the cancellation of the Agreement to Sell. The fact about cancellation of the Agreement to Sell has been pleaded for the first time by the defendants in their written statement filed in June, 2022. It may also be noted that in the legal notice dated 23<sup>rd</sup> May, 2022 by the plaintiff, it has been stated that the Agreement to Sell has been cancelled, however, no particulars as to when the said agreement was cancelled, have been given. Therefore, at this *prima facie* stage, I am not inclined to accept the submissions of the defendants that the Agreement to Sell was mutually cancelled.

14. As regards the submissions of the defendants that the Agreement to Sell does not clearly identify the portions to be sold under the said Agreement, counsel for the plaintiff has drawn attention of the Court to Annexure-A of the Agreement to Sell, which identifies the 500 square feet



on the ground floor to be sold to the plaintiff. As regards the 2000 square feet area to be sold in the basement, it is the defendants' own case that the total area of basement is 2200 square feet.

15. Counsel for the plaintiff has submitted that out of the aforesaid area of 2200 square feet, 200 square feet has been kept for a vault and the remaining area of 2000 square feet was agreed to be sold in terms of the Agreement to Sell. Therefore, in my *prima facie* view, there was clarity between the parties with regard to the portions of the properties to be sold.

16. As regards the submission of the defendants of prolonged silence on part of the plaintiff from 2008 to 2020, it may be noted that it was the responsibility of the defendants to get the property free from the lien of Punjab & Sind Bank so that the conveyance deed could be executed in favour of the plaintiff. It was only on 18<sup>th</sup> November that defendants wrote to plaintiff that the matter has been settled with Punjab & Sind Bank and the plaintiff promptly responded to the same. A reading of the order passed by the DRT reflects that the matter was finally settled between Punjab & Sind Bank and the defendants only on 15<sup>th</sup> September, 2021, when the settlement was recorded before the DRT. Therefore, even if the plaintiff remained silent between 2008 and 2020, that cannot be taken as being lack of readiness or willingness on behalf of the plaintiff. It is also not the case of the defendants that the lien of Punjab & Sind Bank was removed at an earlier point of time. The material condition in the Agreement to Sell was that the lien of Punjab & Sind Bank in respect of the suit property be removed by the defendants. There cannot be any question of readiness and willingness while this condition was yet to be fulfilled. Readiness and willingness of the plaintiff would come into picture only after the aforesaid

condition has been satisfied by the defendants. Immediately after the DRT of 15<sup>th</sup> September, 2021, the plaintiff, in its legal notice dated 23<sup>rd</sup> November, 2021 expressed its readiness and willingness to perform the agreement to sell.

17. Counsel for the plaintiff has correctly placed reliance on the judgment in *Panchan Dhara* (supra), wherein, while upholding the specific performance of an Agreement to Sell, the Supreme Court made the following observations:

*“27. Performance of a contract may be dependent upon several factors including grant of permission by the statutory authority in appropriate cases. If a certain statutory formality is required to be complied with or permission is required to be obtained, a deed of sale cannot be registered till the said requirements are complied with. In a given situation, the vendor may not be permitted to take advantage of his own wrong in not taking steps for complying with the statutory provisions and then to raise a plea of limitation.”*

18. Even if the market value of the suit property has increased significantly in this period, it was on account of delay of the defendants and therefore, cannot be held against the plaintiff. There was nothing in the agreement to indicate that time was of the essence of the contract. Even otherwise, it is a settled position of law that time is not of the essence in contracts for sale of immovable properties, unless it is made out to be so from the facts and circumstances of each case.

19. In these circumstances, the judgment in *U.N. Krishnamurthy* (supra) would not come to the aid of the defendants.

20. In view of the discussion above, a *prima facie* case has been made out on behalf of the plaintiff for grant of interim injunction.

21. Balance of convenience requires that the suit property may be preserved. Irreparable loss and injury would be caused to the plaintiff, which cannot be compensated in monetary terms, if the suit property is alienated during the pendency of the suit.

22. Accordingly, an interim injunction is passed in favour of the plaintiff and against the defendants restraining the defendants, their agents, servants, attorneys, heirs, assignees and all persons, in active concert or participation with the defendants, from disposing of, transferring, selling, alienating, mortgaging or handing over possession and/or creating third party rights/interest in the suit property till the disposal of the suit.

23. Needless to state, any observations made herein are only for the purposes of the present application and would have no bearing on the final outcome of the suit.

**CS(COMM) 70/2022**

List before the Joint Registrar on 16<sup>th</sup> September, 2022.

**AUGUST 17, 2022**

*at*

**AMIT BANSAL, J.**