Haji Sharafat Hussain and Others

Vs

Badri Bishal Dhandhania

Civil Appeal No. 1506 (N) of 1970

(M. H. Beg, R. S. Sarkaria, P. N. Shinghal JJ)

25.11.1975

JUDGMENT

SHINGHAL, J. -

1. This is an appeal by the defendants on a certificate granted by the High Court of Judicature at Patna under Article 133(1)(a) of the Constitution. The facts giving rise to it are quite simple, and may be shortly stated.

2. Respondent Badri Bishal Dhandhania filed a suit for specific performance of contract for the sale of certain immovable properties by the appellants. The parties arrived at a compromise, and the trial Court decreed the suit. It was agreed in terms of the compromise petition dated May 17, 1965 that the defendants would pay Rs. 7,000 to the plaintiff towards the costs of the suit, that amount would be set off against the consideration for the sale, and defendants Nos. 1 to 4 would execute a "kebala" in favour of the "plaintiff or his nominee or nominees" in respect of the suit properties, and get the same registered by November 30, 1965. The plaintiff on his part agreed and undertook that on such execution he would pay defendant No. 1 a sum of Rs. 1,19,999 on account of the balance of the consideration of Rs. 1,25,000 after deducting Rs. 5,000 on account of certain money already paid by him to defendant No. 1 and that if the defendant failed to execute and register the "kebala" by November 30, 1965, the plaintiff would be the right to have it executed and registered by the Court "in his own favour or in favour of his nominee or nominees", and further that if the plaintiff failed to have the "kebala" executed and registered and pay the balance of the consideration, he would forfeit the right to recover the earnest money of Rs. 5,001 from the defendants and will have no right to get the "kebala" executed. The decree was, in that case, to become infructuous.

3. The plaintiff contended that stamps worth Rs. 1,600 and Rs. 1,694 were purchased by him on November 20, 1965, stamps worth Rs. 2,200 were purchased on November 30, 1965, and drafts, on November 20, 1965, but the defendants did not perform their part of the obligation. The defendants contended, however, that the drafts were handed over on November 29, 1965, in the evening, and could not therefore be verified by their lawyer and there was default on the part of the plaintiff who thereby forfeited his right to get the decree executed. It was pleaded that time was of the essence of the contract. The Subordinate Judge of Bhagalpur held on July 31, 1967, that the compromise decree was no longer binding on the parties and the execution application was maintainable because the plaintiff was not intending, from the very beginning, to purchase the property himself, but waited to sell away its bulk to others for profit and that the ten sale deeds which the plaintiff wanted to be executed in favour of various persons would drive the defendants to the institution of suits for recovery of money if the consideration was not paid at the time of execution. It was also held, inter alia, that the plaintiff's demand for the execution on ten "kebalas". The Subordinate Judge held

further that time was of the essence of the contract and there was no right to have the "kebalas" executed after November 30, 1965.

4. The plaintiff felt aggrieved and went up in appeal to the High Court, which took the view that there was sufficient time for the defendants to consult their lawyers in regard to the draft "kebalas" and that the plaintiff was never told that the drafts were not in consonance with the agreement. The High Court also held that as the defendants had themselves stated in their application (which was filed on December 1, 1965) that the "plaintiff should have got the 'kebalas' executed by November 30, 1965, otherwise the earnest money, etc. should stand forfeited". The contention that only one "kebala" was to be executed in favour of the decree-holder or his nominee or nominees could not be accepted and that the plaintiff was in default in submitting as many as ten "kebalas" for execution. The appeal was therefore allowed, the order of the Subordinate Judge was set aside and detailed directions were given for the execution and registration of the documents of sale. The defendants feel aggrieved and have filed the present appeal.

5. It has been argued by Counsel for the appellants that, under the terms of the compromise decree, the respondent was not entitled to ask for the execution of ten "kebalas" and that the High Court erred in holding that he himself was not the defaulter. We have already made a reference to the terms of the compromise petition dated May 17, 1965 whereby defendants Nos. 1 to 4 agreed and undertook, to execute a "kebala" in favour of the plaintiff or "his nominee or nominees" in respect of the suit properties. We have also made a reference to the defendants own application of December 1, 1965 in which they admitted that, according to the terms of the compromise decree, the plaintiff had to get the "kebalas" executed by November 30, 1965. We are of the opinion that the High Court was justified on the basis of these documents, in taking the view that the plaintiff was entitled to have ten "kebalas" executed by November 30, 1965 and that the plaintiff was not a defaulter on that account. There is thus no force in the argument to the contrary.

6. The only other argument which has been advanced for our consideration is that the High Court has erred in rejection the contention that the plaintiff was not ready with the money, and that there was no continuous readiness and willingness on his part to perform his part of the contract. It will be enough for us to say in this connection that it is not in dispute that the plaintiff handed over the drafts of the "kebalas", at any rate, on November 29, 1965, and filed a petition in the Subordinate Judge's Court on November 30, stating that he had handed over the drafts for approval and had deposited the money in the treasury for purchasing of stamps and had obtained the same within the knowledge of the defendants. It was also stated in that application that the plaintiff was prepared to pay the consideration as stipulated in the compromise petition. There is therefore no justification for the argument that the plaintiff was not ready and willing to perform his part of the contract.

7. As we find no force in the arguments of the Counsel for the appellants, we have no hesitation in dismissing the appeal with costs.

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