

M/S. Eldee Velvet and Silk Mills Pvt. Ltd.

Vs

Anand Ram Whigh (Dead) By Lrs.

Civil Appeal No. 190 of 1974

(A. P. Sen, V. B. Eradi JJ)

06.03.1987

ORDER

1. We heard Shri Salve, learned counsel for the appellant at quite some length. The appeal arises out of a suit for specific performance brought by the appellant as the plaintiff on July 21, 1958 in the Court of the First Commercial Sub-Judge, First Class, Delhi of an agreement dated April 5, 1956 entered into between the appellant and the late A. R. Whigh, the predecessor-in-title whereby he agreed to sell his leasehold rights in plot No. 4, block No. 10, Golf Links, New Delhi for a sum of Rs. 55,000, or in the alternative, for damages for alleged breach of contract. The plaintiff's suit has been dismissed both by the learned Sub-Judge and the High Court on various grounds. The learned counsel has mainly advanced two contentions, namely : (1) There was no hardship which the defendant could not foresee, particularly when he was put to notice by the plaintiff and therefore the High Court was not justified in disallowing the plaintiff's claim for specific performance on the ground that the case fell within Section 22 of the Specific Relief Act, 1877 (2) In any event, the High Court having held that the defendant was in breach, should have decreed the alternative claim for damages. We find no merit in either of these contentions.

2. As to the first, we are in agreement with the High Court that the change in the circumstances brought out in this case were such that it would cause great hardship to the defendant if a decree for specific performance were to be passed inasmuch as the defendant at considerable cost had constructed a massive residential building on the plot under the compelling necessity and this was not a fit case for grant of the discretionary relief for specific performance. The fact is undisputed that the allotment of the plot to the defendant by the Government of India, Ministry of Rehabilitation was subject to the condition that he was to construct the building within a period of two years of the handing over of the possession. It cannot be doubted that that period was fast running out and there was no alternative for the defendant but to start construction of the building to save the property from forfeiture. The mere fact that the plaintiff sent a notice while the work of construction was in progress does not alter the legal position. As regards the comparative hardship, the plaintiff would be put to no loss if the relief of specific performance was not granted. Apart from payment of a sum of Rs. 5,000 by way of earnest money, it took no further steps for getting the conveyance executed and did nothing beyond sending a lawyer's notice. We are inclined to think that the High Court was not justified in disturbing the finding of the learned Sub-Judge that the plaintiff was disentitled by his conduct from claiming specific performance by reason of his standing by. The suit was not brought till July 21, 1958 by which time the defendant had already put up a substantial portion of the residential building at considerable cost. As to the claim for damages, both the learned Sub-Judge as well as the High Court have rightly held that the plaintiff has failed to substantiate its claim for damages. There is no evidence to show that the plaintiff was put to any loss.

3. For these reasons, the appeal must fail and is dismissed. We however direct that a sum of Rs. 5000 deposited by the respondents in the Court of the First Commercial Sub-Judge, First Class, Delhi may be withdrawn by the appellant if it has already not been withdrawn.

4. There shall be no order as to costs.

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