

CS no. 493/2017
Kesar Singh v. Anil Kumar Gupta

13.11.2019

Present:- Sh. Charanjeet Singh, authorized representative of
the plaintiff.
None for the defendant.

ORDER

1. Matter is today listed for order on an application under
Order 12 Rule 6 CPC preferred by the plaintiff seeking judgment
on admissions.

2. The brief background relevant for the disposal of the
application is that the plaintiff instituted the instant suit for specific
performance and recovery of damages against the defendant on
02.06.2017. In nutshell, the case of the plaintiff is that he had
entered into a Collaboration Agreement dated 25.08.2014 with the
defendant for the purpose of construction of four floors and a stilt
parking on the ground floor of the property bearing no. 27/103,
Gali no. 7, Vishwas Nagar, Shahdara, Delhi-110032 admeasuring
200 sq. yds. As per the Collaboration Agreement between the
parties, all the expenses towards the completion of the construction
work/materials /labour were to be borne by the defendant and in

lieu thereof, the plaintiff was to execute the sale deed in respect of the second floor of the property in favour of the defendant upon the completion of the lantern of the fifth floor. In compliance of the terms of the collaboration agreement, the plaintiff executed the sale deed in respect of the second floor in favour of the defendant on 16.04.2015 but to safeguard the interest of the plaintiff for the completion of construction, a memorandum of understanding was also executed between the parties on 10.04.2015 and the defendant issued nine security cheques to the plaintiff to indemnify the loss/damage, if any, sustained by him on the violation of the terms and conditions of the Collaboration Agreement dated 25.08.2014 on the part of the defendant to complete the work within the agreed time. As per Clause 5 of the Collaboration Agreement, the defendant was required to complete the entire construction within a period of 12 to 14 months i.e. on or before 25.10.2015. Out of the nine security cheques, eight security cheques were of Rs.4 lacs each, which were to be returned by the plaintiff to the defendant on completion of the stage wise work as detailed in the Annexure 1 to the Collaboration Agreement and the last cheque of Rs.28 lacs was to be returned at the time of completion of the entire construction to the satisfaction of the plaintiff. Though as per the memorandum of understanding dated 10.04.2015 the original sale deed was to be kept in the custody of the plaintiff till the completion of the construction, however, the

defendant took away the same from the plaintiff and sold out the second floor to some other person on the pretext that the funds were required to complete the construction. The defendant not only delayed the completion of the construction work of the floors belonging to the plaintiff but also deviated from the agreed terms regarding the material to be used. The plaintiff sent notices dated 20.09.2016 & 28.09.2016 to the defendant asking him to complete the construction but the defendant neither replied to the same nor completed the construction work. Averring that the defendant is liable to pay not only damages to the tune of Rs.3 lacs for using the material other than that agreed between the parties for raising the elevation but also a sum of Rs.2,000/- per day for the delay caused w.e.f. 26.10.2015, the plaintiff approached the court seeking the following reliefs:-

(A) a decree of specific performance in favor of the plaintiff and against the defendant thereby directing the defendant to complete all the construction work of the suit property bearing no. 27/103, Gali no. 7, Vishwas Nagar, Shahdara, Delhi measuring area 200 sq. yds. as per the terms and conditions of the Collaboration Agreement dated 25.08.2014, Annexure- 1 dated 25.08.2014 and M.O.U. dated 10.04.2015 executed between the plaintiff and the defendant in respect of the suit property;

(B) a decree of recovery of Rs.3,00,000/- (Rs. Three Lacs only) as losses/damages caused by the defendant to the plaintiff by using wrong/inferior material/not according to the Annexure -1 in elevation raised by the defendant and also recovery of Rs.14,68,000/- as damages and losses caused by the defendant in delaying the construction of the suit property.

On 25.01.2018, the defendant filed his written

statement wherein though he admitted the execution of Collaboration Agreement dated 25.08.2014 as well as Memorandum of Understanding dated 10.04.2015 between the parties, however, he disputed the enforceability of both the documents on the ground that they are unregistered and unstamped documents. The defendant put forth the defence that as the plaintiff was in need of money, he had executed the sale deed dated 16.04.2015 in respect of the second floor after taking an amount of Rs.28 lacs in cash and had promised to execute the sale deed of third floor in lieu of the expenses borne in raising the construction on the property but later on, in order to avoid the execution of sale deed of the third floor, the plaintiff has filed the instant suit. The defendant also averred that the material used for raising the elevation had been changed at the request of the plaintiff and that the entire work except the installation of the lift has already been completed by him. Alleging that the plaintiff has himself violated the terms of collaboration agreement and is not allowing him to install the lift despite the fact that all the material is lying at the property, the defendant has sought dismissal of the suit.

3. On 02.03.2019, the application on hand was preferred by the plaintiff. In the application, it has been averred that since the defendant has admitted the Collaboration Agreement dated 25.08.2014 as well as the Memorandum of Understanding dated

10.04.2015 between the parties in his written statement and has only denied the receipt of notice dated 20.01.2016 and 28.01.2016, the plaintiff is entitled to judgment in his favour. The counsel for the plaintiff has submitted that since the pleas raised by the defendant in the written statement are false and frivolous and nothing remains to be proved, there is no need for trial.

4. The application has been vehemently opposed by the counsel for the defendant.

5. I have heard the counsel for both the parties and perused the material available on record.

6. Order 12 Rule 6 CPC, which deals with judgment on admissions, is reproduced as under:-

Judgment on admissions.- (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

It is trite that in order to be entitled to judgment under Order 12 Rule 6 CPC, the plaintiff must show that the admissions

of fact by the other party are clear, unambiguous and unqualified.

7. In the case on hand, though the defendant has admitted the execution of Collaboration Agreement dated 25.08.2014 as well as Memorandum of Understanding dated 10.04.2015 between the parties, however, as against the case of the plaintiff that he had abandoned the construction work in between, it is the stand of the defendant that the entire construction work except the installation of lift has already been completed by him and that installation of lift could not be done because the plaintiff is not allowing him to install the same. The defendant has further alleged that the change in the material used in raising the elevation work was done at the instance of the plaintiff and that the plaintiff has filed the suit to avoid the execution of sale deed in respect of third floor of the property in his favour in lieu of the expenses borne by him in completing the construction. Needless to say, in view of the pleas raised by the defendant in the written statement, it cannot at all be said that there are clear and unequivocal admission of the facts by the defendant so as to entitle the plaintiff to judgment. All the issues raised by the defendant in his written statement are the matter of trial and cannot be adjudicated at this stage.

Considering the above, the application under Order 12 Rule 6 CPC preferred on behalf of the plaintiff is hereby

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dismissed.

Issues in the matter have already been framed.

Put up for PE on **03.02.2020**.

(SMITA GARG)
Addl. District Judge-02,
Shahdara, Karkardooma Courts,
Delhi. 13.11.2019.