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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1186 OF 2007

Bharat Shantilal Shah & Anr. ...Plaintiffs.

Vs.

The Royal Palms (India) Pvt.Ltd & Ors. ..Defendants.

Mr. Hiralal Thakkar, Sr. Counsel with Mr. Vibhav
Krishna and Ms. Laxmi Mordekar i/b M/s Juris Consillis,
for the Plaintiffs.

Mr. Iqbal Chagla, Sr. Counsel with Mr. Pesi Modi
Mr. Naval Agarwal, Neville Lashkari, Ms. Y. Khanwilkar,
Ms. Dimple Shah and Tejas Joshi i/b M/s
Mulla & Mulla & C.B. & C., for the Defendants.

CORAM: A.A. SAYED, J.

DATE : MARCH 06, 2012.

P.C.:

Further Cross-examination of Witness Mr. Bharat Shantilal Shah (Plaintiff
No.1) by Mr. Iqbal Chagla, learned Senior Counsel on behalf of the
Defendants.

(Shown para 64 of the Notes of Evidence)

74. Question: What were the negotiations which are referred to in para 64 of the Notes of Evidence ?

Ans. The negotiations were in respect of the survey and boundary of the plot.

75. Question: According to you, the survey and boundary had not been ascertained at the time when the Agreement was entered into ?

Ans. As there was no fencing on the boundaries of the plot, the same was to be put up by conducting a survey jointly.

(The Witness volunteers) In the said meeting there was also discussions in respect of infrastructure which was to be provided and the maintenance which was to be paid after infrastructure was provided.

76. Question: Do you agree that what was being discussed between the parties was the enforcement of the rights and obligations under the Agreement and not negotiations as you have said ?

Ans. There was an Agreement for Sale, however, it was suggested that since the Agreement for Sale was not possible, Agreement of Lease can be negotiated in respect of the plot. This aspect was also discussed.

77. Question: According to you, therefore, this discussion that there should be a lease in respect of the plot, was discussed and negotiated after 29.1.2003 ?

Ans. That is correct.

(Shown para 69 of the Notes of Evidence)

78. Question: Do you still maintain that the discussion in respect of the lease was for the first time negotiated after 29.1.2003 ?

Ans. It was not the first time and the negotiations with respect to the Agreement of Lease was carried out many times earlier.

(The Witness volunteers) We had told them that we shall first enter into Agreement of Lease and thereafter cancel Agreement for Sale.

(Shown para 70 of the Notes of Evidence)

79. Question: If according to you the Agreement of Lease had been terminated by letter dated 29.1.2003, then were the negotiations now for a different lease on new terms and conditions ?

Ans. We were negotiating draft of the new Lease Agreement.

80. Question: Was the proposed Lease Agreement on the same terms and conditions or new terms and conditions ?

Ans. On the same terms and conditions.

(Shown para 64 of the Notes of Evidence)

81. Question: When you say the parties were negotiating several issues including maintenance and infrastructure, can you tell the Court firstly what the new provision for maintenance and infrastructure was being negotiated ?

Ans. There was no fresh talk about maintenance and infrastructure.

82. Question: Were there any other issues which were being negotiated between the parties ?

Ans. The other issues discussed were in respect of proposed lease documents.

83. Question: According to you therefore there were no new negotiations but only discussion and therefore what is stated in para 64 is incorrect ?

Ans. According to me discussion and negotiations are the same.

Answer in para-64 is correct.

84. Question: According to you what were the several issues mentioned in para 64 ?

Ans. I do not remember the other issues.

85. Question: According to you therefore there were no issues which were being negotiated but only being discussed ?

Ans. According to me discussion and negotiations are the same thing.

86. Question: According to you the letter of termination dated 29.1.03 has been withdrawn by the Defendants ?

Ans. Yes.

87. Question: If that letter of termination according to you had been withdrawn then there was no question of any further negotiations but only enforcement of Agreement ?

Ans. That is not correct.

88. Question: Therefore according to you it had to be negotiated again ?

Ans. What was negotiated was in respect of proposed Lease Deed.

89. Question: According to you, the Defendants wanted lease and you wanted sale ?

Ans. It is not correct.

(Shown para 69 of Notes of Evidence)

90. Question: Do you agree in the light of the answer given in para-69, you had agreed that since 1999 you were ready for lease of immovable property provided the document was executed and it was duly registered ?

Ans. Yes.

91. Question: Do you now agree that there was no new negotiation or discussion after 29.1.2003 as to whether there should be a lease executed between the parties ?

Ans. The proposed Lease Agreement was not finalized.

(Shown Exhibit P-31 letter dated 17.1.2004)

92. Question: On receipt of this letter did you understand that the discussions which were being held after 29.1.2003 were put to an end and that the matter was closed by the Defendants ?

Ans. I understood the contents of the letter.

(The Witness volunteers) All the discussions so far as the Lease Deed had come to an end but Agreement for Sale was still in force.

93. Question: Did you understand on receipt of this letter that the Defendants were not willing to execute Lease Deed ?

Ans. Yes.

94. Question: Was there any response in writing to this letter dated 17.1.2004 from you ?

Ans. I do not remember.

(Shown letter dated 30.1.2004 addressed by Sameer Sanghavi & Co., Chartered Accountants to Shiralkar & Co., Advocates.)

95. Question: Do you identify the signature of Shri Sameer Sanghavi ?

Ans. I cannot identify the signature of Shri Sameer Sanghavi.

(Shown para 9 of Affidavit in Rejoinder of the Witness dated 6th July 2007 and Exhibit "D"- copy of letter dated 30.1.2004 annexed thereto)

96. Question: Do you now remember the letter dated 30.1.2004 ?

Ans. Yes, I remember. This is the same letter which has been shown to me.

Exh.D-1 (The letter dated 30.1.2004 addressed by Sameer Sanghavi & Co. to Shiralkar & Co. is taken on record and marked Exhibit-D-1.)

97. Question: The letter dated 17.1.2004 (Exhibit “P-31”) made it clear that the Defendants were not willing to execute a lease. Can you tell the Court then how Agreement was to be performed ?

Ans. This did not have any meaning, as the Agreement for Sale was already existing.

98. Question: Do you agree that if the Conveyance of the plot was not permissible in law, then the Agreement could not be performed by way of a sale ?

(Mr. Thakkar, learned senior Counsel for the Plaintiffs sought to object to the question. In the meanwhile, the Witness has answered the question)

Ans. That is not correct.

(Shown para 59 of the Notes of Evidence and Exhibit “P-6”- letter dated 19.12.1997.)

99. Question: Do you agree that in the light of opinion obtained, as recorded in letter dated 19.12.1997, the Agreement could not be performed except by way of Lease Deed and not by of Conveyance ?

(Mr. Thakkar, learned Sr. Counsel objects to the question on the ground that question is outside the scope of issue of limitation.

The question, in my view, is in furtherance to para 59 of the Notes of Evidence. I am therefore inclined to allow the question.

Ans. That was the opinion as referred to in para 59.

100. Question: Do you have any doubt about the correctness of this opinion ?

Ans. No.

101. Question: Did you obtain any other opinion ?

Ans. No

(As Court time is over, stand over to 14th March, 2012 at 3 p.m. for further cross-examination.)

(A.A. SAYED, J.)