

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.5913 OF 2006

SURESH CHANDRA AGARWALA . . . . .APPELLANT(S)

VERSUS

M/S. SHREE GOPAL HOUSING CO. . . . .RESPONDENT(S)

WITH

CIVIL APPEAL NO.5914 OF 2006

O R D E R

None appears on behalf of the appellants even on the second call.

We have heard learned counsel appearing for the respondent and perused the record.

The appellants have preferred these appeals by special leave against the impugned orders passed by the High Court modifying the decree for specific performance passed by the trial court.

The only dispute is in regard to payment of the dues for giving servant rooms and car parking space along with the flats. Admittedly, the flats in question are already in possession of the appellants.

There is no dispute between the parties with regard to the original agreement where the respondent-builder agreed to transfer Flat No.3 admeasuring 1485 sq.ft. and Flat No.2 admeasuring 1540 sq.ft. on the fifth floor of a

building viz., "Madhuban" situated at 17/1G, Alipore Road, Kolkata along with one servant room and car parking space with each flat in the basement of the said building. When the respondent refused to hand over servant rooms and car parking space on the plea of non-payment of certain dues, the appellants filed a suit for specific performance which was finally decreed by the trial court in their favour directing the respondent-builder to hand over servant rooms as also car parking space to the appellants. Being aggrieved, the respondent assailed the said judgment and decree by filing appeals before the High Court.

By the impugned judgment, the High Court modified the decree directing both the appellants to pay a sum of Rs.20,000/- for giving effect to the decree passed by the trial court. The High Court further directed that the appellants will not be entitled to any claim with respect to servant rooms and car parking space.

After giving our anxious consideration in the matter, we are of the view that the High Court has not correctly appreciated the facts of the case inasmuch as a mere non-payment or default in payment of some of the dues, the appellants cannot be deprived of the servant rooms and car parking space which are attached to the main flats allotted to the appellants as per the original agreement.

Even if the submission made by learned counsel appearing for the respondent that the servant rooms have been sold, that sale itself is void and illegal and will not confer any right, title or interest in favour of any person.

We, therefore, allow these appeals, set aside the impugned orders passed by the High Court and restore that of the trial court.

.....J  
[M. Y. EQBAL]

.....J  
[ARUN MISHRA]

NEW DELHI;  
JANUARY 28, 2016.

ITEM NO.114

COURT NO.9

SECTION XVI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.5913/2006

SURESH CHANDRA AGARWALA

Appellant(s)

VERSUS

M/S. SHREE GOPAL HOUSING CO.

Respondent(s)

WITH C.A. No. 5914/2006

Date : 28/01/2016 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.Y. EQBAL  
HON'BLE MR. JUSTICE ARUN MISHRA

Counsel for the parties

Mr. Abhijit Sengupta, Adv. (Not Present)

Mr. Ramesh Singh, Adv.

Ms. Anne Mathew, Adv.

Mr. Suman Jyoti Khaitan, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

None appears on behalf of the appellants even on the second call.

We have heard learned counsel appearing for the respondent and perused the record.

These appeals are allowed in terms of the signed order.

(Sanjay Kumar-II)  
Court Master

(Indu Pokhriyal)  
Court Master

(Signed Order is placed on the file)