

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on : February 02, 2016

% *Judgment Delivered on : February 08, 2016*

+ **FAO(OS) 364/2015**

KAMLENDRA SINH

..... Appellant

Represented by: Mr.Harish Malhotra, Sr.Advocate
instructed by Mr.Vijay K.Singh and
Mr.Nilava Bandyopadhyay,
Advocates

versus

SANGHI BROS (INDOR) LTD.& ANR

..... Respondents

Represented by: Mr.Jayant Bhushan, Sr.Advocate
instructed by Mr.Atul Shanker
Mathur, Ms.Nimita Kaul, Mr.Vivek
Mathur and Ms.Sweta Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. On December 02, 1998 a Memorandum of Understanding was executed between Sanghi Bros (Indore) Pvt.Ltd. and Kamlendra Sinh. As per the recitals thereof, Surendra Sinhji of Alirajpur, the elder brother of Kamlendra Sinh owned a large number of properties including A-9/29, Vasant Vihar, New Delhi. Surendra Sinhji died in the intervening night of 29th and 30th March, 1996 leaving behind a will dated November 05, 1984 as per which 55% share in the property at Vasant Vihar was bequeathed to

Kamlendra Singh and the remaining 45% to other persons. The recitals record that Kamlendra Singh had applied for the will to be probated to which there was opposition by one Jyoti Rathore who claimed that a day prior to his death Surendra Sinhji had executed a will, probate whereof she had sought. The recitals further record that Kamlendra Singh lacked resources to maintain the properties of his elder brother and had requested Sanghi Bros (Indore) Pvt.Ltd to incur expenditure in the upkeep of the properties and being unable to repay the same had proposed to transfer his interest in the property at Vasant Vihar for consideration and upon the terms and conditions recorded in the memorandum.

2. With the aforesaid recitals, vide clause-1 of the MOU it was recorded that Kamlendra Singh had agreed to sell his interest acquired under the will dated November 05, 1994 from his brother in house No.A-9/29, Vasant Vihar, New Delhi in favour of Sanghi Bros (Indore) Pvt.Ltd. Vide clause-2 the agreed sale consideration was mentioned at ₹2.5 crores. Vide clause-3 it was recorded that Sanghi Bros (Indore) Pvt.Ltd shall continue to pay such money as would be needed to preserve the said property to be adjusted against the sale consideration. Vide clause-4 it was recorded that the Sanghi Bros (Indore) Pvt.Ltd shall pay to Kamlendra Singh ₹15,000/- as remuneration to act as a consultant and that said money would be treated as consideration in the event the property is acquired by Kamlendra Singh. Vide clause-5 it was recorded that for renovation and maintenance of the said property Sanghi Bros (Indore) Pvt.Ltd shall pay money to Kamlendra Singh. Vide clause-6 it was recorded that Sanghi Bros (Indore) Pvt.Ltd shall help Kamlendra Singh in pursuing the probate petition and money paid would

be treated as part sale consideration. Vide clause-7 it was recorded that a Special Power of Attorney shall be executed by Kamlendra Sinh in favour of Sharad Kumar Sanghi to deal with the said property. Vide clause-8 Kamlendra Sinh agreed not to sell, mortgage, gift or transfer any property belonging to him or comprised in the estate of his elder brother including the residential house at Vasant Vihar. Vide clause-9 it was agreed that Kamlendra Sinh shall identify a property of his own or out of his entitlement to the satisfaction of the company as security in favour of the company. Vide clause-10 it was agreed that Kamlendra Sinh shall execute a lease or a deed of assignment/transfer/sale with respect to the property at Vasant Vihar to convey the interest in favour of the Sanghi Bros (Indore) Pvt.Ltd. Vide clause-11 it was agreed that the Sanghi Bros (Indore) Pvt.Ltd shall charge and debit all monies paid to Kamlendra Sinh on account of the said property towards taxes, maintenance, repairs, security, insurance etc. Vide clause-12 it was agreed that in the event the Sanghi Bros (Indore) Pvt.Ltd takes possession of the said property under orders of the Court or under any arrangement, rent paid or expenses incurred by the company shall be treated as part of the sale consideration. Vide clause-13 it was agreed that as and when Kamlendra Sinh realises his interest in the said property he shall execute a conveyance deed and at that stage the remaining amount shall be paid by Sanghi Bros (Indore) Pvt.Ltd to him. Vide clause-14 it was agreed that Kamlendra Sinh may negotiate, settle or acquire any interest of the beneficiary in the said property. Vide clause-15 it was agreed that Kamlendra Sinh would execute further documents required to give effect to clauses-10 and 13. Vide clause -16 it was agreed that if Kamlendra Sinh

failed to acquire any interest in the property the company would be entitled to realize all the loans and amount paid to Surendra Sinhji by recourse to the properties of Kamlendra Sinh. Vide clause-17 it was agreed that Kamlendra Sinh would obtain necessary permission to convey title to Sanghi Bros (Indore) Pvt.Ltd. Vide clause-18 it was stipulated :-

“That in the event of any party avoiding the obligation under the Memorandum of Understanding the other party shall have the right to compel him to perform under the Specific Relief Act.”

3. Vide clause-21 it was stipulated:-

“That this agreement shall remain valid until it is cancelled by the parties or at the instance of either party giving three months notice, provided however, that the parties shall review the agreement after every year”

4. In May 2004 the Sanghi Bros (Indore) Pvt.Ltd filed a suit seeking specific performance of the Memorandum of Understanding pleading that Kamlendra Sinh had intimated his intention to resile the Memorandum of Understanding in May 2003. Alternative prayer made was to pass a decree in sum of ₹20,79,049/- statedly paid from time to time to Kamlendra Sinh.

5. Admitting having executed the Memorandum of Understanding dated December 02, 1998, Kamlendra Sinh pleaded he being a victim of misrepresentation and inducement. He denied having received ₹20,79,049/- but admitted certain payments received by him. Necessary would it be to highlight that he did not raise the plea that in view of clause-21 of the agreement, the same being determinable, no specific performance would lie in view of Section 14(1)(c) of the Specific Relief Act.

6. Kamlendra Sinh filed IA No.3744/2005 praying for the rejection of the plaint on the ground that the Memorandum of Understanding was voidable at his option and for which he relied upon clause-21 of the agreement.

7. With reference to clause-18, contents whereof we have reproduced hereinabove, and various other clauses, vide order dated February 02, 2006 a learned Single Judge this Court held that in the face of clause-18 it cannot be said that the contract is determinable.

8. Said order has attained finality.

9. Therefore, Surendera Sinhji cannot reurged at this stage the issue of the contract being determinable and hence incapable of specific performance.

10. It is in the aforesaid backdrop we need to consider the legality of the impugned order dated April 27, 2015, which has restrained Kamlendra Sinh from encumbering, apart from the suit property even other properties in which he has an interest, and for which we would highlight that it is clause-8 of the Memorandum of Understanding which has been used against him. The learned Single Judge has highlighted said clause.

11. Whilst it may be true that the suit seeks specific performance of the Memorandum of Understanding concerning property at Vasant Vihar but at the same time it cannot be ignored that there is a prayer made in the suit to restrain Kamlendra Sinh from encumbering other properties in which he has been conferred a benefit by his elder brother as per the will dated November 05, 1984.

12. A perusal of the Memorandum of Understanding arrived at between

the parties, contents whereof we have briefly summarized hereinabove, evinces that the parties are conscious of the fact that Kamendra Sinh may or may not perfect title to the suit property. Aware of the fact that Kamendra Sinh was to receive money from Sanghi Bros (Indore) Pvt.Ltd for not only the repair, maintenance and upkeep of the suit property but even other properties left behind by his elder brother Surendra Sinhji, the agreement, envisaging that Surendra Sinhji may ultimately lose the battle with Jyoti Rathore, has provided for a security in the form of personal properties of Kamendra Sinh being available to satisfy the return of such monies which Sanghi Bros (Indore) Pvt.Ltd has advanced from time to time to Surendra Sinhji.

13. Thus, the argument of learned senior counsel for Surendra Sinhji that since the suit sought specific performance concerning the property at Vasant Vihar therefore personal properties of Surendra Sinhji could not be the subject matter of a restraint order is to be reject, and we do so.

14. The conduct of Kamledra Sinh also justifies the impugned order. Notwithstanding he being under a restraint order to create any right, title or interest in the property at Vasant Vihar, he appointed an attorney who negotiated the sale of the property and on behalf of Kamendra Sinh even executed a sale-deed. The sale-deed was thereafter presented for registration before the Sub-Registrar and it required a judicial order for the Sub-Register not to register the sale-deed. In this connection we may note that on January 31, 2005 Kamendra Sinh was directed not to create any third party interest in the property at Vasant Vihar and this order was confirmed on January 22, 2008. In violation thereof Kamendra Sinh is alleged to have executed an

agreement to sell on February 04, 2011 to sell to the vendee his interest in the property at Vasant Vihar acknowledging Rs.4.5 crores. In spite of various orders passed he did not produce the agreement to sell in the Court. Sanghi Bros (Indore) Pvt.Ltd learnt about the same and filed IA No.1564/2012 pleading that Kamendra Sinh had executed an agreement to sell concerning his share in the property at Vasant Vihar to which in the reply filed Kamendra Sinh positively stated that he had not created any third party interest. He pleaded that without substantiating the nature of the documents executed by him it could not be alleged that he had violated the order dated January 22, 2008. In para 14 of the reply Kamendra Sinh very cleverly pleaded that being an old man he had executed some documents with regard to the maintenance of the property. He denied having executed the agreement to sell dated February 04, 2011. But to his misfortune, Sanghi Bros (Indore) Pvt.Ltd managed to obtain a certified copy thereof because the document was registered. Not only that. Through his attorney, Kamendra Sinh presented for registration a sale-deed in favour of one R.C.Aggarwal and this required judicial intervention once again by Sanghi Bros (Indore) Pvt.Ltd which had to file another interim application in which on August 30, 2012 the Court had to direct the Sub-Registrar to forward the documents for registration by the attorney of Kamendra Sinh pertaining to the property at Vasant Vihar. It is also relevant to note that that firstly Kamendra Sinh inducted R.C.Aggarwal as a licensee in the property at Vasant Vihar and thereafter has proceeded to present for registration a sale-deed concerning the property at Vasant Vihar in the name of a company of which R.C.Aggarwal is a Managing Director.

15. We therefore find no merit in the appeal and specially keeping in view the conduct of Kamendra Sinh.

16. The appeal is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

FEBRUARY 08, 2016
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