

4\* HIGH COURT OF DELHI : NEW DELHI

**FAO No. 214/2008 & CM No. 9528/2008**

% Judgment reserved on: 08<sup>th</sup> December, 2009

Judgment delivered on: 11<sup>th</sup> January, 2010

1. Shri Subhash Seth  
S/o Late Dr. D. D. Seth,  
R/o 617, Begum Bagh, Meerut (U.P)
2. Shri Chand Grover,  
S/o Nishchint Grover,  
R/o 178/79, Pate Nagar, Meerut (U.P)
3. Smt. Sangeeta Malik,  
W/o Shri Ravinder Malik,  
R/o 617, Begum Bagh, Meerut (U.P)

All through their General Attorney  
Shri Ashok Goel  
S/o Late Shri Hari Ram Goel,  
R/o 28/42, West Punjabi Bagh,  
New Delhi.

....Appellants.

Through: Ms. Geeta Luthra, Sr. Adv. with  
Mr. A. C. Bhasin, Mr. Amit Bhasin  
and Mr. Abhishek Agarwal, Adv.

Versus

M/s New Delhi Hotels Limited,  
Hotel Ambassador, Sujjan Singh Park,  
New Delhi (Service to be effected through its Managing  
Director/Authorised Signator/Manager)

....Respondent.

Through: Mr. Mohit Gupta.

**Coram:**  
**HON'BLE MR. JUSTICE V.B. GUPTA**

1. Whether the Reporters of local papers may

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| be allowed to see the judgment?                           | Yes |
| 2. To be referred to Reporter or not?                     | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

**V.B.Gupta, J.**

Present appeal has been filed against order dated 3<sup>rd</sup> June, 2008, passed by Additional District Judge, Delhi, vide which appellants application under Order 39 Rules 1 and 2 of Section 151 of Code of Civil Procedure (for short as 'Code') was dismissed.

2. Appellants case is that one Smt. Kailash Rani, wife of Sh. Amarnath Gupta, booked a flat bearing no. 803, 8<sup>th</sup> Floor, Mercantile House, 15 Kasturba Gandhi Marg, New Delhi and deposited the required amount for the same with respondent company. Smt. Kailash Rani, nominated Sh. D. D. Grover, son of Sh. I. D. Grover and accordingly, the said flat was transferred in the name of Sh. D. D. Grover, vide letter dt. NDHL/CR-105/Dated 22.09.1985.

3. During his lifetime, Sh. D. D. Grover paid to the respondent a sum of Rs.4,56,865/- with respect to the said flat, which was under construction at the relevant time. Sh. D. D. Grover was murdered on 15.5.1988. During his lifetime, he had executed a Will dt. 9.11.1986 in respect of his properties, including the flat in question, in favour of his sister Smt. Satya Wati Seth, as Sh. D. D. Grover was bachelor.

4. Thereafter, Smt. Satya Wati Seth applied for grant of Probate for the properties left by Late Sh. D. D. Grover, including the flat in question. During pendency of the probate proceedings, Smt. Satya Wati Seth also expired on

23.01.2003 intestate, leaving behind appellants herein, as her two sons and one daughter, as the only legal heirs.

5. Appellants obtained Probate of the will of the deceased Sh. D. D. Grover who was admittedly accepted as nominee of Smt. Kailash Rani, for Reservation/Allotment of flat in question and applied for the transfer/mutation of the said flat to the respondent and for handing over the possession thereof. Respondent vide its letter dt. 20.8.2007, admitted the nomination of Sh. D. D. Grover, in place of Smt. Kailash Rani, the original allottee. It was stated that Sh. D. D. Grover simply paid Rs.2,20,000/- only and before his death he was to deposit a sum of Rs. 1,58,828.95 due as on 5.4.1988, which amount he failed to deposit and consequently on failure of the payment, the aforesaid flat was cancelled by respondent and appellants have no right to lay any claim in respect thereof.

6. Appellants further case is that neither any demand of Rs.1,58,828.95 was ever made from Sh. D. D. Grover nor any intimation dated 22.5.1990 was ever made nor the cancellation ever took place. The alleged cancellation is liable to be declared as null and void and respondent is under obligation to hand over the possession of the said flat to the appellants. Had there been any cancellation, the respondent must have brought this fact to the knowledge of SDM, when he inspected the premises and gave his valuation report, after investigation at the site on 9.2.2007 and there would not have been any demand of the house-tax from the authorities concerned. The respondent failed to hand over the possession of the said flat and is using the said flat continuously illegally.

7. Since there is apprehension that respondent shall create third party interest in the said flat, appellants filed application under Order 39 rules 1 & 2 of the Code.

8. On the other hand, respondent's case is that appellants have no legal right to file the present suit and have no locus sandi as well as the cause of action for filing the present suit. The present suit is barred by the Limitation Act.

9. Respondent admits that Smt. Kailash Rani got booked a flat in question and deposited the required amount with them. As per terms and conditions, it was agreed by Smt. Kailash Rani that in case of default in payment of installment for any reason, the reservation of space/flat shall stand cancelled and she will not be having any claim whatsoever, thereof due to non-payment of installments. The booking has been cancelled long back and same cannot be enforced by the appellants.

10. Respondent admits that Smt. Kailash Rani had nominated Sh. D. D. Grover. However, it was denied that any flat was transferred in his name. Sh. D. D. Grover was bound by all the terms and conditions of booking of flat which were binding on said Smt. Kailash Rani. Sh. D. D. Grover made certain payments to the respondent in the booking account of the said flat but it is absolutely false that he deposited a sum of Rs. 4,56,865/- with respondent. Smt. Kailash Rani deposited Rs. 68,500/- with respondent and when she nominated Sh. D. D. Grover as her nominee, the said amount was also treated in the name of the nominee. Sh. D. D. Grover also made deposits making a total deposit to be Rs.2,60,435.81 and thereafter, no further amount was deposited. On the date, when the reservation

was cancelled, a sum of Rs. 2,87,354.39 was due. Respondent was not under any obligation to give any notice in writing. However, respondent had been communicating the allottee from time to time for the payments. The payments were to be made in time, which has been the essence of the booking of the flat and in case of non compliance of the same, the booking was deemed to have been cancelled. There has been default in the deposit of the amounts by Sh. D.D. Grover and, therefore the booking was cancelled and consequently allotment of the flat also stood cancelled. It is only after the payment of the entire cost of the flat that Flat Buyers Agreement was to be executed and admittedly, no such agreement has been executed between the respondent either with Sh. D. D. Grover or with Smt. Kailash Rani or with any person claiming through the said persons. Therefore, there has not been any legal right vested with the appellants for filling the present suit.

11. Since Sh. D. D. Grover was the nominee of Smt. Kailash Rani, therefore, the legal heirs were not going to inherit any right in the flat until and unless Smt. Kailash Rani who then was alive, could not have nominated the legal heirs of Sh. D. D. Grover as her nominee. In fact not only Sh. D.D. Grover but also Smt. Kailash Rani failed to deposit the amount due, in spite of demands by the respondent. Consequently, vide letter dt. 22.6.1990 the intimation of cancellation was given along with the cheque of the amount of Rs. 2,60,435.81 and the same was sent by Regd. AD Post. Smt. Satyawati Seth never intimated to the respondent company about the death of Sh. D. D. Grover or his Will.

12. Flat in question was not the property of deceased Sh. D. D. Grover who never paid the entire cost of the flat and committed breach of the terms of reservation/booking of the flat. Hence, the reservation/booking was cancelled. Sh. D. D. Grover even during his life time itself committed disqualification by defaulting in the payment of dues resulting in cancellation of the flat which cancellation cannot and could not be challenged by the appellants. Moreover, appellants are even otherwise barred from disputing the same after about 18 years of the cancellation.

13. It is contended by learned counsel for appellants that initially Smt. Kailash Rani deposited a sum of Rs.68,500/- which was adjusted in the account of the transferee Sh. D. D. Grover. The total deposit was of Rs. 4,56,865/- in respect of the flat in question, which is evident from the Wealth Tax Return of Sh. D. D. Grover for the year up to 31.3.1986. Whereas case of respondent is that, only a sum of Rs. 2,60,435.81p. was deposited by Sh. D. D. Grover with them. The aforesaid controversy between the parties, clearly shows that a triable issue is raised which requires adjudication on merits.

14. Further, during the life time of Sh. D. D. Grover, no demand for any outstanding dues were ever made from him in any manner nor any intimation was given regarding thereto to him or about the alleged cancellation of the flat in question. Had there been any intimation of cancellation of the flat in the year 1990 or demand of outstanding due was made to Sh. D. D. Grover, certainly the cheque for the alleged deposit of amount by Sh. D. D. Grover must have been sent during his life time but the respondent failed to do so.

15. Other contention is that the occasion for filing the present suit arose only when letter dated 3.7.2007 was sent submitting the certified copy of the Probate orders and judgment as required by the respondent along with other documents. Instead of complying with the said notice, respondent sent a notice giving vague reply. Thus, it is crystal clear that cause of action to file the present suit arose only in the year 2008 and not in the year 1990. Hence, the suit is not barred by limitation.

16. Lastly, when Smt. Kailash Rani during her life time transferred the suit property in the name of Sh. D. D. Grover and request regarding thereto, has been accepted by respondent, therefore, the respondent cannot arbitrarily cancel the allotment of the flat to Sh. D. D. Grover in any manner. Thus appellants have got a case for grant of injunction as there are triable issues.

17. In support of its contentions, learned counsel for appellants referred the following judgments;

- (i) ***Kiran Jogani & Anr Vs. George V. Records, Sarl;***  
***155 (2008) Delhi Law Times 739 (DB).***
- (ii) ***Arooshi Enterprises Pvt. Ltd. Vs. Mr. Rahul Butalia & Ors;***  
***2006 VII AD (Delhi) 441.***

18. On the other hand, it is contended by learned counsel for respondent that deceased Sh. D. D. Grover was merely a nominee of Smt. Kailash Rani. Mere nomination does not have the effect of conferring on the nominee any beneficial interest on the death of holder. Late Sh. D. D. Grover was never the purchaser of the flat in question and as such he was not having any right, title or interest in the flat in question, so as to bequeath the same in favour of his sister Smt. Satya Wati Seth.

19. It is further contended that as per letter dated 25.3.1981, relied upon and admitted by the appellants, demand of Rs. 41,115.07 was made and this amount was to be deposited. But even the said demand was never paid by Smt. Kailash Rani or Sh. D. D. Grover, which is reflected from the fact that in letter dated 22.9.1985 of Smt. Kailash Rani, she by her own admission did not mention any payment made to the responder after 27.11.1980.

20. Further, wealth tax return also does not show that Sh. D. D. Grover ever deposited Rs. 4,56,865/- with the respondent.

21. In support of its contentions, learned counsel respondent cited the following judgments;

- (i) ***Vishin N. Khanchandani and another Vs. Vidya Lachmandas Khanchandani and another;***  
***AIR 2000 Supreme Court 2747.***
- (ii) ***Smt. Sarabati Devi & Anr. Vs. Smt. Usha Devi;***  
***1984 (1) S.C.R. Page 992.***

22. Principles for grant of temporary injunction are well settled namely;

(i) There has to be prima facie case.

(ii) Balance of convenience lies in favour of the party claiming injunction and;

(iii) There will be irreparable loss if injunction prayed for is not granted.

23. It is an admitted fact that in the year 1980, Smt. Kailash Rani applied for reservation of a flat, which was to be constructed by the respondent. In 1981, respondent informed her that she has been allotted a flat and the tentative cost of the flat would be Rs.2, 32, 031.90 paisa. In 1985, Smt. Kailash Rani sent a letter

to the respondent informing them that she has transferred all her rights, title and interest qua the said flat to Sh. D. D. Grover. Thereafter, Sh. D. D. Grover made some deposits in respect of flat, as per demand of the respondent, from time to time.

24. Sh. D. D. Grover, who was the nominee of Smt. Kailash Rani, had died on 15<sup>th</sup> May, 1988. With his death, the nomination stood cancelled automatically. At the time of death of Sh. D. D. Grover, Smt. Kailash Rani who had made the nomination in favour of Sh. D. D. Grover, was alive. Thus, the present appellants could have approached Smt. Kailash Rani for fresh nomination, which they have not done so. Thus, the legal heirs of Sh. D. D. Grover had no legal right in the said flat.

25. There is also nothing on record to show that during his lifetime, Sh. D. D. Grover ever paid a sum of Rs. 4,56,865/- as alleged by the appellants. On the other hand, as per various documents placed on record by the respondent, a sum of Rs. 2,87,353.39/- was due towards the cost of flat as on 17<sup>th</sup> May, 1990.

26. There is no dispute about the principles of law as enumerated in Kiran Jogani and Arooshi Enterprises (Supra) but in the present case, apparently there is no violation of the legal rights of the appellants and as such question of causing any legal injury; loss or harm to them would not arise. Apprehension of the appellants, prima facie seems to be misconceived and not tenable.

27. It is well settled that a party is not entitled to an order of injunction as a matter of course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of the appellants only, if it is proved to

the satisfaction of the Court that unless the respondent is restrained by an order of injunction, the irreparable loss or damaged will be caused to the appellants, during the pendency of the suit.

28. Here, the appellants have no legal right to the flat in question and thus there is no infirmity or ambiguity in the impugned order.

29. Present appeal is therefore not maintainable and same is hereby dismissed.

30. Parties shall bear their own costs.

**CM No. 9528/2008**

Dismissed being infructuous.

Trial court record be sent back.

11<sup>th</sup> January, 2010  
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**V.B.Gupta, J.**