

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

+ **CS [OS] NO.193/2007**

#Mr. Atul Garg

..... Plaintiff

! Through: Mr. Naresh Thanai, Advocate

Versus

\$ Mr. Mehtab Singh

.....Defendant

^ Through: None.

CORAM:-

* **HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

S.N.AGGARWAL, J (ORAL)

This is a suit filed by the plaintiff against the defendant for specific performance of an agreement to sell dated 22.04.2006 in respect of the suit property being agricultural land measuring 4 bigha and 11 biswas in khasra No. 64/6/2 (2-09) & khasra No. 7 (2-02) situated in the Revenue Estate of Village Jaunti, Delhi.

2 Briefly stated the facts of the case are as follow:-

The defendant is stated to be the owner of the suit land and he is alleged to have entered into an agreement with the plaintiff to sell the suit land to him for a total sale consideration of Rs. 33 lacs. The sale agreement was executed between the parties on 22.04.2006. The plaintiff is alleged to have paid Rs. 3 lacs to the defendant by means of a cheque at the time of execution of agreement to sell on 22.04.2006. The plaintiff is also alleged to have made further payment of Rs. 3 lacs to the defendant in cash viz. Rs. 2 lacs paid against receipt on 25.04.2006 and Rs. 1 lac paid against receipt on 28.04.2006. The plaintiff has alleged that he was always ready and willing to perform his part of the contract by paying the balance sale consideration of Rs. 27 lacs and complete the transaction of sale in terms of sale agreement dated 22.04.2006. According to the plaintiff, the defendant did not even apply for obtaining NOC from the Revenue Authorities and was avoiding the execution of sale deed in respect of the suit land in favour of the plaintiff on one or the other pretext. The plaintiff is stated to have sent a legal notice dated 03.11.2006 to the defendant calling upon him to perform his part of the agreement within 15 days from the receipt of the said notice. However, since the defendant failed to comply with the notice, the plaintiff has to file the present suit.

The defendant was duly served with the summons of the present suit. Nobody appeared on his behalf despite service of summons on him. He was, therefore, proceeded ex-parte vide order passed by this Court on 22.04.2007.

The plaintiff filed his own affidavit in his ex-parte evidence. He has reiterated the averments contained in the plaint in his affidavit on oath. The plaintiff has proved the agreement to sell dated 22.04.2006 as document Ex. PW-1/1 and receipts of payment dated 22.04.2006, 25.04.2006 & 28.04.2006 as documents Ex. PW-1/2 to Ex. PW-1/4 respectively. The legal notice dated 03.11.2006 sent by the plaintiff to the defendant has been proved as document Ex. PW-1/5.

The oral and documentary evidence produced by the plaintiff on record has remained unrebutted. I have no reason to doubt the said evidence. Upon perusal of the contents of the plaint, affidavit filed by the plaintiff in his evidence and the documents tendered and proved in his affidavit, this Court is of the opinion that the plaintiff has succeeded in proving that the defendant is in breach of the agreement to sell dated 22.04.2006 executed between the parties. It is further proved from the affidavit filed by the plaintiff in his evidence that the plaintiff was always ready and willing to

perform his part of the contract and it was the defendant who committed breach of the terms and conditions of the above referred agreement by not completing the transaction of sale. Hence the plaintiff is entitled to have a decree of specific performance in respect of agreement to sell dated 22.04.2006 against the plaintiff.

In view of the above and having regard to the facts and circumstances of the case, a decree of specific performance in respect of the agreement to sell dated 22.04.2006 (Ex. PW-1/1) is hereby passed in favour of the plaintiff and against the defendant and the defendant is hereby directed to obtain NOC and execute the sale deed in respect of the suit land in favour of the plaintiff and handover the vacant possession of the said suit land to him within two months from today. Decree sheet be prepared accordingly.

FEBRUARY 12, 2008
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S.N.AGGARWAL
[JUDGE]