

. * HIGH COURT OF DELHI : NEW DELHI

+ CS (OS) No.1452/2005

M/s. Anant Raj Agencies Pvt. Ltd. Plaintiff
Through : Mr. Neeraj Malhotra, Adv.

Versus

S. Manjit Singh Kohli & Anr Defendants
Through: None

Coram:

Judgment reserved on: 10th December , 2009
% Judgment decided on : 22nd December, 2009

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

MANMOHAN SINGH, J.

1. The plaintiff filed the present suit for recovery of Rs.28,80,000/- alongwith interest @24% p.a. pendente lite. The suit was initially filed under the provisions of Order XXXVII of the Code of Civil Procedure, 1908 but it was later on converted into a regular suit in terms of a statement made by the counsel for the plaintiff for 20th October, 2005.

2. The plaintiff is a company incorporated under the Companies Act. The suit has been filed by Sh. Anil Sarin, Managing Director of the Plaintiff company who is authorized to file, institute and verify the present suit for and on behalf of the plaintiff company by the resolution passed by the board of directors on 20th September, 2005. Certified copy of the resolution passed by the board of directors in his favour authorizing him to file the present suit is

filed as Ex.PW 1/1.

3. The case of the plaintiff is that the plaintiff company entered into an agreement to sale dated 11th November, 2004 (hereinafter referred to as 'the agreement') with the defendants in relation to the agricultural land admeasuring 53 bighas and 8 biswas out of khasra Nos.1529 (4-13), 1530 (7-14) and 1945 (41-01) situated at Aliganj, Nehru Nagar, Lajpat Nagar and Imperial City (Nazul), New Delhi totaling 107 bighas and 17 biswas (hereinafter referred to as 'the said land') for a total sale consideration of Rs. 65 crores.

4. It is averred in the plaint that the defendants approached the plaintiff and represented themselves to be the owners of the said agricultural land by virtue of various agreements, memorandum of understanding, power of attorneys etc. It is further averred that in terms of clause 2 of the above sale agreement, the plaintiff paid a sum of Rs.24 lac by way of two account payee cheques of Rs.11 lac each and Rs.2 lac in cash to the defendants. It is stated that the defendant No.1 received the cheque No.452678 dated 11th November, 2004 drawn on SBI, Chandrdalok Building, Janpath, New Delhi-1 for Rs.11 lac by endorsing his original signatures on the photocopy of the cheque received by him. Another cheque bearing No.452677 dated 11th November, 2004 drawn on SBI, Chandralok Building, Janpath, New Delhi-1 was given in favour defendant No.2. The cheques received by defendants No.1 and 2 were duly encashed and is reflected in their bank statement dated 16th November, 2004.

5. In terms of clause 3 of the said agreement the remaining amount of Rs.64.78 crores was to be paid by the plaintiff to the defendants within 180 days from the date of receipt of documents pertaining to the suit property such as a certified copy of sale deed, NOC for transfer of the said land, other title

deeds, mutation letter, khatoni, aks shajra etc. against the delivery of physical and vacant possession of the said land and registration of the sale deed.

6. The plaintiff averred that neither the documents mentioned above were received by it from the defendants nor other formalities as envisaged under clause 3 of the agreement were fulfilled and performed by the defendants. On enquiries made by the plaintiff, it came to its knowledge that the defendants were not owners of the said land. The defendants thus made a false representation to the plaintiff and cheated it. The plaintiff issued a legal notice on 4th June, 2005 to the defendants through its counsel terminating the said agreement and calling upon the defendants to refund a sum of Rs.24 lac alongwith interest @24% p.a. The plaintiff also filed a criminal complaint against the defendants on 2nd May, 2005 before the Economic Offence Wing of the Delhi Police. The notice was sent by registered AD post as well as through UPC. The notice was sent to defendant No.1 and defendant No.2 through registered AD post and UPC but no reply has been received from any of the defendants.

7. The plaintiff states that it has always been ready and willing to fulfil its obligations under the said agreement but the defendants failed to fulfil its obligation on time. The plaintiff thus filed the suit for recovery of principal amount of Rs. 24,00,000/- along with interest at 24% p.a. amounting to Rs.4,80,000/- against the defendants.

8. The defendant No.1 was served on 5th October, 2007 and the defendant No.2 was served through its father on the same date. However, no one appeared on behalf of the said defendants, they were, thus set ex parte vide order dated 11th January, 2008. The plaintiff was directed to file ex parte evidence by way of affidavit.

9. As per the orders of the court, the evidence by way of affidavit of

Sh. Anil Sarin, PW-1, Director of the plaintiff company was filed on 3rd May, 2008. He has reaffirmed the statements made in the plaint. The original agreement to sell dated 11th November, 2004 was filed on record and marked as Ex.PW-1/2. The photocopies of the cheques given to the defendants at the time of execution of agreement to sell dated 11th November, 2004 which bears the original signatures and acknowledgment of the defendant No.1 is marked as Ex.PW-1/3. The plaintiff has also filed on record the original copy of the bank statement dated 16th November, 2004 issued by the bank of the plaintiff which is marked as Ex.PW-1/4.

10. The legal notice sent by the plaintiff on 4th June, 2005 to the defendants to make payment of Rs.24 lac alongwith interest is exhibited as Ex.PW-1/5 and the criminal complaint filed by the plaintiff on 2nd August, 2005 with DCP (Economic Offence Wing), Delhi Police was marked and exhibited as Ex.PW-1/9.

11. The plaintiff has proved its case by way of evidence of Sh. Anil Sarin and by filing documents on record. The case of the plaintiff has gone unrebutted. It is established by the plaintiff that it entered into an agreement to sell with the defendants on 11th November, 2004 and gave two cheques of Rs 11 lac each to the defendants respectively on the same date as per the terms of clause 2 in the said agreement. The bank statement of the plaintiff company also shows that the amount of Rs 22 lac has been debited from its account on 11th November, 2004. The plaintiff also sent a legal notice to the defendants intimating them about the termination of the agreement and to make a payment of Rs.24 lac but the defendants sent no reply.

12. In the result, the plaintiff is entitled to decree in its favour. The defendants shall pay to the plaintiff the principal amount of Rs. 28,80,000/- along with pendent lite and future interest @ 9% p.a. from the date of

institution of suit till realization of the decretal amount. Decree sheet be drawn accordingly.

DECEMBER 22, 2009
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MANMOHAN SINGH, J