

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 02.11.2011

+ CS(OS) No.1729/2010

D.K. GUPTA

..... Plaintiff

Through: Mr. Prashant Pandey, Adv.

versus

RAVINDER KISHORE SINHA

..... Defendant

Through: None

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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

V.K. JAIN, J. (ORAL)

1. This is a suit for recovery of declaration and recovery of Rs.25 lacs.
2. The case of the plaintiff is that he had entered into an agreement dated 15.11.2005 with respect to purchase of second and third floor built upon plot No.1, Block No.E of East of Kailash, New Delhi from the defendant along with the proportionate share in the garage block including

servant quarters for a total sale consideration of Rs.2.25 crores.

3. It is further alleged that while executing the agreement, the defendant mis-represented to the plaintiff that he had legal and legitimate right to enter into the aforesaid agreement since he had already entered into an agreement with the actual owner of the property, i.e. Smt. Majula Bhushan and under that agreement, he had the lawful right to sell the second and third floor of the property to the plaintiff. On believing the false representation made by the defendant, the plaintiff paid a sum of Rs.11 lacs as earnest money which was duly acknowledged by the defendant.

4. The defendant later informed the plaintiff that since the owner of the property was not performing her part of the contract with him, he had filed a civil suit against her and till the adjudication in his favour, no sale deed could be executed in favour of the plaintiff. The suit filed by the defendant was dismissed by the Court holding that he never had any right qua the second and third floor of the property under the agreement dated 31.3.2005 which he had with the owner of the property. The appeal filed by the defendant

against that order was also dismissed by the Division Bench of this Court.

5. This is also the case of the plaintiff that the defendant never disclosed to him about the dismissal of the suit and the appeal filed by him and he kept on saying that the matter was still pending and he would execute the sale deed in favour of the plaintiff once the suit is decided in his favour. The plaintiff has now claimed back the amount of Rs.11 lacs, which he had paid to the defendant along with the interest on that amount @ 18% per annum. The plaintiff has also claimed a sum of Rs.6.46 lacs as damages for the mental torture and agony suffered by him at the hands of the defendant.

6. The defendant was proceeded ex-parte on 25.7.2011 since neither written statement was filed nor no one appeared for him. It would be pertinent to note here that the defendant was served with the suit summons through his employees and vakalatnama on his behalf was also filed on 28.10.2010.

7. 'Ex.PW1/1' is the agreement executed by the defendant in favour of the plaintiff on 15.11.2005 for sale of the second and third floor built upon plot No.1, Block No.E

of East of Kailash, New Delhi for a total sale consideration of Rs.2.25 crores. It was recorded in the agreement that the vendor had entered into an agreement dated 31.3.2005 with Smt. Manjula Bhushan for purchase of the basement, ground, first, second and third floors built upon plot No.1, Block No.E, situated in the residential colony known as East of Kailash Residential Scheme, New Delhi along with the proportionate share of the garage block including the servant quarters and the sale deed in his favour was to be executed within 36 months from the date of execution of the agreement between him and Smt. Manjula Bhushan. A sum of Rs.11 lacs was paid to the defendant, which was acknowledged in the agreement and the balance was to be paid within 30 months from the date of the agreement, when called upon by the vendor giving 15 days notice for the purpose. The plaintiff was also required to pay interest @ 6% per annum on the balance amount of rupees. If so desires by the defendant, a sum of Rs 1.96 crores was to be paid in the name of Smt. Manjula Bhushan.

8. 'Ex.PW1/2' is the copy of the judgment of this Court dated 09.11.2009 passed in CS(OS) No.549/2008 titled as "Ravinder Kishore Sinha vs. Smt. Manjula

Bhushan". A perusal of the judgment would show that the Court was of the view that the plaintiff (defendant herein) had scrapped the agreement with respect to the second and third floor of the property and he did not keep even the token amount of Rs.4 lac with the seller, Smt. Manjula Bhushan, holding that the contract with respect to the second and third floor of the property was abandoned, the suit filed by the plaintiff (defendant herein) was dismissed.

9. 'EX.PW1/3' is the copy of the order passed by the Division Bench of this Court in RFA(OS) No.102/2009 filed by the defendant against the judgment dated 09.11.2009 in CS(OS) No.549/2008. The appeal filed by the defendant was dismissed by the Division Bench thereby upholding the judgment passed by the learned Single Judge of this Court. Since the defendant has not performed his part of the contract with the plaintiff, he is obliged in law to refund the amount of Rs.11 lacs which he had received from the plaintiff. As far as the interest is concerned, admittedly, there was no agreement between the parties for payment of interest.

11. 'Ex.PW1/4' is the legal notice which the plaintiff sent to the defendant through registered post, calling him

upon to refund the amount of Rs.11 lacs along with the interest @ 18% per annum w.e.f. 15.11.2005.

12. Section 3 of the Interest Act, 1978, to the extent it is relevant provides that in any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest; from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings.

13. Considering the nature of the transaction between the parties, I am of the view that the interest should be awarded to the plaintiff @ 6% per annum. The amount of interest @ 6% comes to Rs.4,18,000/-. The plaintiff, therefore, is entitled to recover a total sum of Rs.15,18,000/- from the defendant.

14. I find no justification for awarding any damages for the alleged mental torture and mental agony claimed by the

plaintiff, particularly when the interest is being awarded to him.

15. A decree for recovery of Rs.15,18,000/- with proportionate costs and pendente lite with future interest @ 6% is hereby passed in favour of the plaintiff and against the defendant.

Decree sheet be withdrawn accordingly.

(V.K. JAIN)
JUDGE

NOVEMBER 02, 2011
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