

* THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA(OS) No.101/2009

Reserved on: 27.07.2011
Pronounced on: 30.09.2011

J.L. GUGNANI (HUF)

..... Appellant

Through: Mr. Harish Malhotra, Senior
Advocate with Mr. A. Maitri,
Advocates

Versus

O.P. ARORA & ORS.

..... Respondents

Through: Mr. O.P. Arora, respondent
no.1 in person with Mr. Arun
Kumar, Advocate
Mr. Vipul Pandey, Advocate
for respondent no.3/
Syndicate Bank.

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE M.L. MEHTA

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not ? | Yes |
| 3. | Whether the judgment should be reported in the Digest ? | Yes |

M.L. MEHTA, J.

1. This appeal is directed against the judgment dated 20th October, 2009 of the learned Single Judge whereby the suit of the appellant/ plaintiff being CS (OS) No.2906/1995 was dismissed. Facts giving rise to filing of the suit are that vide an agreement to sell dated 26th November, 1999, the property bearing number E-1/13, Vasant Vihar, New Delhi (hereinafter referred to as "the suit property") was agreed to be sold by the defendant no.1 to

plaintiff for a total sum of ₹2.6 crore. It is alleged that because the suit property was also agreed to be sold by the defendant no.1 to defendant no.2 M/s Gupta Brothers and that the suit property was mortgaged with defendant No. 3, that these parties were also arrayed as defendants. However, subsequently, defendant no.2 was deleted from the array of defendants.

2. Plaintiff's case as set out was that the defendant no.1 had represented him that the suit property was subject to an equitable mortgage in favour of defendant no.3/Bank for an outstanding credit balance of ₹90 lac and he had agreed to get the same released from the Bank and thereafter to execute the sale deed in his favour. As per the agreement to sell, two cheques of ₹75 lac each respectively dated 26th November 1994 and 31st December, 1994 were given by plaintiff to this defendant at the time of execution of agreement on 26th November 1994. The balance sum of ₹1.10 crore was to be payable at the time of registration of the sale deed. In terms of the aforesaid agreement, the obligations of this defendant were to obtain:

"1. Sale permission from DDA and Society, in terms of the perpetual sub leas deed.

2. Sale permission from the Competent Authority, of the Urban Land (Ceiling and Regulation 2976 Act of 1976), if applicable to the property.

3. Income Tax clearance Certificate on Form No. 34A under Section 23 of the Income Tax Act, 1961.

4. Permission from Appropriate Authority on Form No. 37(1) under Section 269-UC of the Income Tax Act, 1961."

3. It was averred that as agreed, this defendant was to inform the plaintiff by registered post about having taken above permissions and any other permission that may be required and within 30 days thereafter plaintiff was to pay balance amount for the execution of the sale deed by defendant no.1. It was agreed that if defendant no.1 failed to do so, plaintiff "would be entitled to get the sale deed registered through the court of law by specific performance of the contract/ agreement at the costs and expenses of vendor". On the other hand, if the plaintiff failed to make payment of the balance consideration within 30 days, after being so informed by defendant no.1, then he would be liable to pay interest @ 21 % on the balance amount for the delayed period. In Clause (5) of the agreement, it was stipulated that "however, in the event the vendee is desirous of taking possession of the property pending approval/permission, the vendee can do so by making the balance payment and vendor executing/registering all necessary documents, like GPA, Will, Supplementary agreement etc. as may be desired by the vendee's solicitor."

4. The preamble clause of the agreement stipulated the suit property to be subject to equitable mortgage in favour of defendant no.3 Bank for an amount of ₹90 lac and defendant no.1 having agreed to get the same released from the mortgage before executing the sale deed. In Clause (7) of the agreement, defendant no.1 had assured plaintiff that the suit property was free from all encumbrances, except equitable mortgage in favour of defendant No. 3 Bank. In terms of the said clause, defendant No.1 had undertaken that he would be liable and responsible to make good the loss suffered by the plaintiff if there was any dispute or litigation or acquisition in respect of the suit property. In Clause (8), it was stipulated that pending completion of the sale, defendant no.1 would not enter into any agreement to sell in respect of the suit property or any part thereof.

5. The cheque of ₹ 75 lac dated 26th November 1994 was got encashed by defendant no.1. The dispute, however, arose with the plaintiff informing its bankers vide letter dated 31st December 1994 to stop payment of the second cheque of ₹75.00 lacs dated 31st December 1994. Both parties have leveled allegations and counter allegations against each other for breach of agreement. The plaintiff also claimed that he had given ₹14 lac in cash to defendant No. 1, which was denied by defendant no.1. The plaintiff also claimed that he had given verbal intimation to

defendant No. 1 regarding stoppage of cheque, which was also denied by defendant No. 1. The plaintiff also claimed that since defendant No.1 failed to apply for necessary permissions, he applied for the permission of the Appropriate Authority under Section 269 UC of Income Tax Act on 3rd January, 1995 and since the application form 37(I) was not signed by defendant No.1, the Appropriate Authority declined to give no objection. His further case was that sometime in April, 1995, defendant No.1 approached him for amicable settlement to resolve the dispute and expressed his willingness to perform his part of obligation and as a first step agreed to apply to income tax authorities for permission to sell under Section 269 UC of the Income Tax Act. It was claimed by plaintiff that they jointly signed and executed the form 37(I) and under the cover of letter dated 26th April, 1995, he again submitted the form to the income tax authorities which granted permission on 31st July, 1995.

6. It may be noted here that immediately after the stoppage of cheque on 31st December, 1994 by the plaintiff, defendant no.1 represented him on 3rd January 1994 protesting in this regard. The plaintiff wrote back a letter dated 5th January 1995 followed by another letter dated 14th January, 1995 through his counsel alleging breaches committed by defendant No.1 and also offered to discuss to find an amicable solution. Simultaneously, plaintiff

also issued a public notice dated 13th January, 1995, in a leading English newspaper about the agreement to sell the suit property. It may also be noted that plaintiff claimed having written a letter dated 28th March, 1995, to defendant No.3 Bank seeking information as to the outstanding dues of defendant no.1.

7. Plaintiff also claimed that he visited the suit premises on 30th November 1995 and was shocked to see the board of M/s Gupta Brothers (defendant no.2) evidently disclosing that the same was not in possession of defendant no.1. He also alleged that on 7th June, 1996, he received an undated letter from the advocate of defendant no.1 wherein it was alleged that he had failed to perform his part of the agreement and that it was also stated therein that the agreement stood cancelled on account of breaches committed by him. He pleaded that vide letter dated 20th June, 1995, these allegations were denied by him.

8. In the written statement, defendant no.1 denied the averments of the plaintiff that they had jointly applied to the income tax authorities for permission on 26th April, 1995 or that he was aware of filing of application form with income tax authorities either on 3rd January 1995 or thereafter or that he was informed by plaintiff about the stoppage of cheque instructions. His case was that the plaintiff was not ready and willing to

perform his part of agreement inasmuch as he did not have balance sum of ₹75 lac on 31st December 1995 and that since the encashment of this cheque was a condition precedent for him to take further steps, the plaintiff committed the most fundamental and essential breach of the agreement. He alleged that on account of this breach by plaintiff, he has suffered huge losses since he had made commitments in the hope that he would be able to redeem the mortgage from defendant no.3 Bank.

9. The learned Single Judge framed as many as 10 issues. Out of all these, issues No 4 and 6 being the main, are as under:

“Issue No. 4: Whether the plaintiff has been ready and willing to perform his part of the agreement to sell dated 26th November, 1994, if so to what effect?”

Issue No. 6: Whether the plaintiff is entitled to specific performance of the agreement to sell dated 26th November, 1994 as prayed?”

10. The learned Single Judge vide the impugned judgment decided both these issues against the plaintiff and in favour of defendant No. 1. All the other material issues were also decided against the plaintiff and consequently the suit was dismissed with cost of ₹30,000/-. The plaintiff is in appeal before us against the impugned judgment of learned Single Judge.

11. We have heard learned counsel for the plaintiff and defendant No. 1 and perused the record.

12. Referring to the preamble of the agreement dated 26th November 1994, the learned counsel for the appellant/plaintiff submitted that the suit property was subject to equitable mortgage in favour of defendant No. 3, Bank for an amount of ₹90.00 lakh and the vendor (defendant No. 1) had agreed to get the same released from the mortgage before execution of sale deed. It was submitted that, however, later it came to be known that the liability of defendant No. 1 to Defendant No. 3 (Syndicate Bank) was not that of ₹ 90.00 lakh, but of ₹ 1.5 crore and it was wrongly represented in the agreement the same to be ₹90.00 lakh. The learned counsel also submitted that as per Clause (2) of the agreement it was obligatory upon the defendant no. 1 to forthwith apply for and obtain the sanctions/permissions. The sanctions/permission, as stipulated in the agreement have already been noted above. In this regard it was submitted that as per this clause the defendant No. 1 was to apply for the permission/sanctions forthwith "without waiting for the clearance of the cheques or any act further to be done by the plaintiff". It was submitted that defendant No. 1 had suppressed the facts that he owed the Syndicate Bank ₹1.5 crore and not ₹90.00 lakh as held out and that he had also suppressed the fact that he had

already entered into agreement to sell the suit premises with M/s Gupta Brothers. He also submitted that there was no forfeiture clause in the agreement and therefore, time was not the essence of the contract. He submitted that in any case, in the event of delay in payment by the plaintiff, he was liable to pay the balance amount with interest @ 21% per annum for the delayed period. He pointed out that there was a settlement arrived at between the parties in April 1995 and pursuant to which they both jointly signed Form 37(I) for seeking permission of the Appropriate Authority and got its certificate of no objection on 31.07.1995. The learned counsel placed reliance on the decision of this Court in Sudarshan Kumar Jain Vs. Prem Nath Jain , 2009 157 DLT 626, to contend that no objection could be raised by defendant No. 1 to the decree of specific performance being passed in favour of the plaintiff/appellant since the statutory permission of I.T. authorities had been obtained and other statutory permission could always be permitted by the court to be obtained even while decreeing the suit for specific performance. It was also submitted that the plaintiff had also paid ₹14.00 lakh in cash to defendant No. 1 in good faith. Based on all these contentions, the learned counsel submitted that the plaintiff has been always ready and willing to perform his part of the agreement and it was only the

defendant No. 1 who has been trying to wriggle out of the agreement.

13. Defendant No. 1 appeared in person and submitted that the plaintiff was never ready and willing to perform his part of obligation of the agreement. He submitted that the plaintiff did not have balance amount of ₹75.00 lakh in his bank account and even otherwise he was not interested in getting the agreement specifically performed and got stopped payment of cheque on 31.12.1994 without even informing him. He referred to the statement of PW-2 Assistant Manager of Vijaya Bank to demonstrate that balance in the account of the plaintiff as on 31.12.2004 was less than ₹75.00 lakh. He also referred to the statement of Mr. Gugnani wherein he admitted that he had entered in an agreement to sell the suit property on 06.06.1996 with M/s. Krishna Estates and then had also executed yet another agreement dated 10.06.1999 with the said M/s. Krishna Estates for purchase of agricultural land in village Wazirabad in part consideration of the suit premises. Based on this premise, he submitted that the plaintiff was speculating real estate and was not interested in the suit premises. While denying the receipt of ₹14.00 in cash, defendant No. 1 submitted that the plaintiff committed a forgery in preparing a receipt in the sum of ₹14.00 lakh and so an FIR in this regard was lodged against him and he

has also been charge-sheeted by the Court of ACMM. The defendant No. 1 also denied that he ever approached for settlement or that he jointly with the plaintiff applied to the Appropriate Authority for issue of NOC or that the NOC dated 31.07.1995 was issued by the Appropriate Authority of Income Tax Department. He alleged all these to be forged and submitted that there was no reason for him to take any step for permissions without receiving the said payment of ₹75.00 lakh. He submitted that the plaintiff was fully aware of the mortgage with defendant No. 3 Bank and that if the said payment of ₹75.00 lakh was released by him, he would have cleared the outstanding amount of Syndicate Bank and got the title documents released. He submitted that the plaintiff's stoppage of payment without any prior notice to him had totally frustrated the agreement to sell. Defendant No. 1 submitted having suffered enormous hardships and harassments at the hands of the plaintiff.

14. Section 16 of the Specific Relief Act stipulates the situations where specific performance of a contract cannot be enforced in favour of persons specified in clauses (a), (b) and (c) of this section. These clauses read as under:-

16. Personal bars to relief.-Specific performance of a contract cannot be enforced in favour of a person-

- (a) who would not be entitled to recover compensation for its breach; or
- (b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or willfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or
- (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant."

15. In the case of *His Holiness Acharya Swami Ganesh Dassji Vs. Shri Sita Ram Thapar* the Supreme Court held thus:-

"2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinized. There is no documentary proof that the plaintiff had ever funds to pay the balance of consideration. Assuming that he had the funds, he has to prove his willingness to perform his part of the contract. According to the terms of the agreement, the plaintiff was to supply the draft sale deed to the defendant within 7 days of the execution of the agreement, i.e., by 27.2.1975. The draft sale deed was not returned after being duly approved by the petitioner. The factum of readiness and willingness to perform plaintiffs part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would

amply demonstrate that the petitioner/plaintiff was not ready nor capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bite for the time which disentitles him as time is the essence of the contract.”

16. It may be noted that in para 15 of the plaint the plaintiff did aver that “he has at all times been and continues to be ready and willing to perform all his obligations under the agreement to sell dated 26.11.1994. The plaintiff is and has all times been ready and willing to pay the balance sale consideration provided the said defendant fulfills all their obligations under the aforesaid agreement to sell dated 26.11.1994.”

17. However, mere averment of being ready and willing to perform the contract is not enough. In addition, the plaintiff is also required to prove these averments. From the facts, as noted above, it may be seen that the plaintiff was well aware that the suit property which was the subject matter of the agreement was mortgaged with Syndicate Bank for ₹90.00 lakh. The plaintiff’s allegation is that subsequently it came to be discovered that defendant No. 1 owed to the said Bank approximately ₹1.5 crore. This plea was taken just to find an excuse for the stoppage of cheque on 31.12.1994. It is seen from the record that immediately on the stoppage of cheque on 31.12.1994, the defendant No. 1 vide letter dated 3.1.95 had protested against

the stoppage of the said cheque. The plaintiff replied the said letter through his letter dated 5.1.95 and another letter dated 14.1.95 alleging breaches committed by defendant No. 1. In the letter dated 14.01.1995, the lawyer of the plaintiff wrote to defendant No. 1 "it has now transpired from letter dated 1.12.94 of Syndicate Bank that the liability of the Bank is existing to the tune of ₹1.5 crore". If this liability of defendant No. 1 to the extent of ₹1.5 crore to the defendant No. 3 Bank was taken by the plaintiff as the basis amounting to breach of agreement by defendant No.1, he would have immediately reacted on receipt of letter dated 1.12.1994 of Bank and would not have offered through his letter dated 14.01.1995 to discuss the matter for an amicable resolution and also published a notice on 13.01.1995 in the newspaper. We do not see as to how any amount of liability of defendant No. 1 towards defendant No.3 Bank would have any bearing on the stipulated terms of payment of two cheques of ₹ 75.00 lacs each dated 26.11.1994 and 31.12.1994. What was relevant was not the liability of defendant No. 1 towards the defendant No. 3 Bank, but the encashment of both the cheques of ₹ 75.00 lacs each which was the essential fundamental term of the agreement.

18. Likewise, the plea regarding defendant No. 1 having entered into an agreement with M/s Gupta Brothers (defendant

No. 2) was another excuse sought to be taken by the plaintiff. This fact was immediately denied by the defendant No. 1 vide his reply of January 22nd through his lawyer. The plaintiff started taking up these allegations after receipt of protest letter of January 03 from the defendant No. 1. There was nothing on record to substantiate this plea of the plaintiff that there was any agreement executed by defendant No. 1 with M/s. Gupta Brothers prior to the agreement in question. In fact, what was claimed by the plaintiff was that he came to know of this fact only when he visited the suit premises on 30.11.1995 and saw the sign board of M/s Gupta Brothers there. All these would be extraneous to the non-fulfillment of the terms and conditions of the agreement by the plaintiff.

19. As per the agreement, the applications for statutory permissions were to be made by defendant No. 1. Though the time period within which this was to be done was not indicated, but, reading the relevant clause of the agreement it could be seen that it was on the encashment of the two cheques which were given by the plaintiff to defendant No. 1 at the time of agreement on 26.11.1994, that the defendant No. 1 was to take steps for taking the permissions as stipulated in the agreement. Since the permission of the Income Tax Authority was to be jointly by plaintiff and defendant No.1 and the plaintiff knew that till

31.12.94, the defendant had not taken any step in this regard. If it was that the defendant No. 1 was required to take permission even without the encashment of second cheque on 31.12.1994, the plaintiff would have insisted upon the defendant No. 1 to do so. Nothing of the sort was done by the plaintiff in this regard. It was extremely unbelievable that the defendant No. 1 would be required to apply for permission and no objection of the Appropriate Authority favouring plaintiff even without the encashment of the second cheque of ₹75.00 lakh. The plaintiff was very well aware of the fact of equitable mortgage of the suit property with the Bank and also that without the redemption of the same the title deed could not be released and transaction completed.

20. As per the evidence led on record, the plaintiff did not have funds amounting to ₹75.00 lakh in his bank account as on 31.12.1994. This fact was initially confirmed by the official of Vijaya Bank that as on 31.12.1994, the plaintiff had balance of ₹69,80,125/- in his account. It is seen that the plaintiff was permitted to lead additional evidence by this court and Mr. Damodar K. Kamath, Senior Manager of Vijaya Bank was examined in this regard. From the testimony of this witness it could be seen that an amount of ₹10.00 lacs was got credited to the account of the plaintiff on 31.12.1994 itself and that was

inadvertently not brought on record in the evidence of the bank official examined as PW-2 in the suit before the learned Single Judge. The learned counsel for the plaintiff also submitted that the plaintiff had got transferred ₹10.00 lacs from other account making the balance of ₹75.00 lacs on 31.12.1994. Taking as it is that initially there was a balance of ₹69,80,125/-, but the plaintiff got transferred from some other account a sum of ₹10.00 lacs making the total balance of above ₹75.00 lacs. These all seem to have been done by the plaintiff as an eye wash inasmuch as he had issued instructions to the Bank for stoppage of cheque of ₹75.00 lacs for encashment without there being any reason or allegation of any breach of term of agreement by defendant No. 1. By stoppage of cheque the plaintiff deliberately and without any justifiable reason not only violated the essential and fundamental term of agreement, but acted at variance with the relation intended to be established by the contract.

21. Though the plaintiff vaguely stated that he had informed the defendant No. 1 verbally about stoppage of cheque, but this all can not appeal to any reason in view of the entire factual matrix. Significantly, defendant No. 1 had written a letter to the plaintiff on 3.1.95 stating that the agreement stood cancelled on account of dishonour of the cheque. It was only after this that the plaintiff came out with various allegations of breach by defendant

No. 1 including that defendant No. 1 had failed to apply in form No. 37(I) within due date. In the absence of there being any stipulation regarding time for submission of application form 37(I), the use of words 'due date' by the plaintiff was misplaced. The defendant No. 1 was under no obligation to take any step for seeking permission without the encashment of second cheque of ₹75.00 lakh dated 31.12.1994.

22. From the letter dated 30.01.1995 of the Income Tax authorities to the plaintiff it would be seen that the plaintiff had himself sent a form 37(I) without signatures of defendant No. 1, to the Appropriate Authority. The plaintiff had submitted this form on 3.1.95 knowing fully well that it was not signed by the defendant No. 1 and also that he has already got stopped the payment of the cheque. This conduct of the plaintiff demonstrates his intentions of dragging defendant No. 1 into difficult situations. The plaintiff in his letter dated 26.04.1995 written to the Appropriate Authority admitted having earlier submitted Form No. 37(I) without the signature of the transferor (defendant no.1). The matter did not rest here. He further proceeded with his ill intention and stated to the Appropriate Authority in the said letter that earlier form 37(I) had not been signed by the transferor and now it was duly signed by both of them for necessary action. While doing so, the plaintiff seems to have forgotten that all these

would expose his malafide intention. In view of the correspondence that ensued between the plaintiff and defendant No. 1 after stoppage of cheque coupled with the issue of public notice by the plaintiff, no reasonable or prudent person in such circumstances would sign form 37(I) seeking permission of the Appropriate Authority for selling the suit premises to the plaintiff. Since the defendant No. 1 was not forthcoming for signing the Form 37(I) on account of dishonour of cheque, the plaintiff was desperate in firstly applying for the permission under Form 37(I) without the signature of defendant No. 1 and secondly by writing to the Appropriate Authority on 26.04.1995 regarding signatures of defendant No. 1 on resubmitted form 37(I). With the denial by defendant No. 1 that he had ever signed such a form, the burden was on the plaintiff to show that such a form had been signed by defendant No. 1. The learned Single Judge has taken note of the evidence of PW-1, an official of Appropriate Authority of Income Tax department, who proved letter dated 12.03.2009 written by the ITO stating that the record file is not readily available in the office. All that was proved was a copy of a document dated 31.7.1995 purported to be issued by the Income tax authority indicating its no objection to the transfer of property. In the light of categorical denial by defendant No. 1 of his having signed any form and his accusing the plaintiff of fabricating the same, the

burden was on the plaintiff to show that in fact the defendant No. 1 had joined him in signing such a form. The plaintiff could not be said to have discharged this burden from the statement of this witness in the background of the conditions those prevailed post stoppage of cheque as noted above.

23. There was no denial by the plaintiff that he had entered into an agreement dated 6.6.96 with M/s Krishna Estates followed by another agreement of 10.6.99 with it regarding purchase of agricultural land for a total consideration of ₹11.04 crore and that in the agreement executed between him and M/s Krishna Estates, as part payment of the consideration of the agricultural land, he had sold all his rights and interests flowing from the present agreement to sell. There was express reference to the facts that he was holding an agreement to purchase suit premises from defendant no. 1 that he has obtained no objection from the income tax department and that his rights and interests in the suit premises were sought to be taken over by M/s Krishna Estates. Entering into this type of agreement with M/s Krishna Estates would clearly demonstrate the intention of the plaintiff in not being interested in getting the agreement to sell specifically performed for himself.

24. The plaintiff's plea of having paid ₹14.00 lakh in cash was half hearted and apparently unbelievable. The defendant No. 1 has categorically denied having received any such payment against the alleged receipt. Admittedly, an FIR No. 245/2005 was registered against the plaintiff and charge-sheet also framed against him. This was unbelievable that such huge amount would have been paid in cash by the plaintiff to defendant No. 1 without there being any occasion or reason to do so.

25. The learned Single Judge has appreciated the entire factual matrix while recording that the plaintiff has simply failed in proving that he was ready and willing to perform his part of the agreement and accordingly was not entitled for the specific performance of the said agreement. He rightly answered issues No. 4 and 6 against the plaintiff and in favour of defendant No. 1. We have not been able to see any infirmity or illegality in the findings of the learned Single Judge. The other issues are follow-up of issues No. 4 and 6 and in fact no argument was advanced by learned counsel for the appellant assailing the findings on the remaining issues. Consequently, we do not find any merit in the appeal and dismiss the same.

26. While parting we may note that with regard to payment of ₹75.00 lakh by the plaintiff to defendant no. 1, the learned Single

Judge stated that since there was no prayer made in the plaint in this regard it was unable to grant such a relief to the plaintiff and therefore, question of payment of the same to the plaintiff does not arise. The learned Single Judge consequently passed the order of return of the aforesaid sum of ₹75.00 lakh lying deposited in the court to defendant No. 1. Without going into the merit on this point, we are of the view that to avoid unjust enrichment of defendant no.1 and further round of litigation between the parties, the said deposit needs to be refunded to the plaintiff based on principle of equity, justice and good conscience. Accordingly, while dismissing the appeal on merit, we modify the impugned judgment to the extent that the sum of ₹75 lac with all accrued interest thereon be refunded to the plaintiff on his making application in this regard before the Registrar General of this Court. The appeal is disposed of accordingly.

**M.L. MEHTA
(JUDGE)**

**A.K. SIKRI
(JUDGE)**

September 30, 2011
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