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

+ CS(OS) 2726/2012

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Judgment dated 30.09.2014

MANJIT SINGH MEHTA

..... Plaintiff

Through: Mr.Gaurav Khanna & Mr Saurabh
Tewari, Adv.

versus

BALWANT KAUR

..... Defendant

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S. SISTANI, J (ORAL)

1. Plaintiff has filed the present suit for Specific Performance of Contract u/s 5 of Specific Relief Act, Permanent Injunction and Compensation.
2. Summons in the suit and notice in the application were issued on 07.09.2012. Counsel for the defendant entered appearance on 03.04.2013 when time was granted to the defendant to file the written statement. No written statement was filed and none appeared for the defendant on subsequent dates to contest the matter, consequently vide order dated 22.04.2014, defendant was proceeded ex parte.
3. Plaintiff, Mr.Manjit Singh Mehta has filed his affidavit by way of evidence and the same has been exhibited as **PW-1/A**. PW1 has deposed that the plaintiff and the defendant Smt. Balwant Kaur and her family

members, know each other very well, being family friends for the last several years.

4. PW1 has also deposed that in the beginning of the year 2009, the defendant approached the plaintiff and expressed her desire to sell the second floor with roof/terrace rights of the property bearing no. 24, Block-D, measuring 250.839 sq. meters, situated in the lay out plan of Malviya Nagar extension, presently known as Saket, New Delhi, with common entrance, passage, stair case along with proportionate share of free hold land underneath the same. The site plan showing the suit property in red color has been exhibited as **Ex. PW-1/1**.
5. PW1 has further deposed that it was agreed between the plaintiff and the defendant, that the defendant shall sell the second floor with its roof/terrace rights of property no. D-24, Saket, New Delhi for a total consideration/sale price of Rs. 34,50,000/- (Rupees Thirty Four Lacs and Fifty Thousand Only) and the plaintiff agreed to purchase the same for the said amount. PW1 has also deposed that the defendant requested the plaintiff during the negotiations, that her family has purchased a plot at Mohali City (Haryana) and they intend to construct the said plot and one of the sons of the defendant will shift to Mohali and because of this, the defendant will only be able to give the possession of the suit property and execute the title documents in favour of plaintiff, after 18 months from the execution of agreement to sell. PW1 has next deposed that the defendant further requested the plaintiff that major portion of the sale consideration be paid to the defendant, in the first six months only, as they require funds for construction of the plot at Mohali and the plaintiff agreed to both the above mentioned requests of the defendant, as plaintiff had very thick relations with the family of the defendant.

6. Mr.Manjit Singh Mehta, PW1, has further deposed that an agreement to sell and purchase dated 02.04.2009 was executed between the parties and the plaintiff paid the defendant, a sum of Rs. 5,00,000/- vide cheque no. “012551” dated 23.03.2009 drawn on the Federal Bank Limited, Chandni Chowk Branch, Delhi, as earnest money in respect of the sale price of the entire second floor of the suit property. The original agreement to sell has been exhibited as **Ex. PW-1/2** and the receipt issued by the defendant has been exhibited as **Ex. PW-1/3**.
7. PW1 has also deposed that within a week of execution of the agreement to sell cum purchase, the defendant requested the plaintiff to pay a further amount of Rs. 5,00,000/- as part payment of the entire sale consideration and an amount of Rs. 5,00,000/- was paid to the defendant by the plaintiff on 09.04.2009 vide cheque no. “012553” dated 09.04.2009 drawn on the Federal Bank Limited, Chandni Chowk Branch, Delhi. The receipt issued by the defendant has been exhibited as **Ex. PW-1/4** and further an amount of Rs. 5,00,000/- was paid to the defendant on 15.04.2009, vide cheque no. “012555” drawn on the Federal Bank Limited, Chandni Chowk Branch, Delhi. The receipt issued by the defendant has been exhibited as **Ex. PW-1/5**.
8. PW1 has further deposed that on request by the defendant, an amount of Rs. 5,00,000/- vide cheque no. “012556” dated 16.04.2009 was paid to the defendant and again on 16.06.2009 on the demand of the defendant, an amount of Rs. 10,00,000/- was also paid by the plaintiff to the defendant vide cheque no. “012558” dated 16.06.2009 drawn on the Federal Bank Limited, Chandni Chowk Branch, Delhi. The receipts were issued by the defendant which have been exhibited as **Ex. PW-1/6** and **Ex. PW-1/7** respectively.

9. PW1 has next deposed that all the cheques issued by the plaintiff, drawn on the Federal Bank Limited, Chandni Chowk Branch, Delhi were duly encashed by the defendant and till 16.06.2009 the plaintiff had paid to the defendant a total amount of Rs. 30,00,000/- towards the sale price of the suit property and only an amount of Rs. 4,50,000/- remained balance/due towards the total sale consideration.
10. Mr Manjit Singh Mehta, PW1, has further deposed that after the completion of 18 months from the date of execution of the agreement to sell and purchase, the plaintiff contacted the defendant and requested the defendant to complete the sale transaction as plaintiff was ready and willing to pay the balance of the sale consideration, to the tune of Rs. 4,50,000/- , however, the defendant sought further time of 18 months, for execution of the sale deed and informed the plaintiff that some disputes have arisen with respect to allotment of plot at Mohali and it may take couple of months to resolve it and for construction of the plot at Mohali. PW1 has next deposed that the plaintiff was not at all inclined to extend further time for execution of the sale deed, but due to request of the defendant who is a senior citizen and widow and due to thick friendly/family relations between the plaintiff and the family of the defendant, the plaintiff agreed to extend the time of execution of the sale deed for another 18 months and Sh. Kulraj Singh, son of the defendant on instructions of the defendant wrote a letter dated 01.10.2010, regarding the extension of period for execution of sale deed, for another 18 months. The letter signed by the defendant has been exhibited as **Ex. PW-1/8**.
11. PW1 has also deposed that on 26.03.2012 the plaintiff contacted the defendant over the phone and informed her that the plaintiff has requisite arrangement of balance amount of Rs. 4,50,000/- and the money required for the purchase of stamp fees for the execution of the sale deed and also

requested the defendant to come at the office of the sub-registrar on 2.4.2012, for the purpose of execution of the sale deed.

12. PW1 has further deposed that the plaintiff on 02.04.2012 went to the office of Sub-Registrar-V, Mehrauli, New Delhi, along with the bank draft for Rs. 4,50,000/-, however, despite waiting till the lunch time, the defendant did not turn up there and all efforts of the plaintiff to contact the defendant and her son were defeated as defendant did not pick up the calls of the plaintiff and mobile phone was switched off so the plaintiff submitted an application to this effect to the Sub-Registrar-V Mehrauli, New Delhi. The notarized copy of the demand/bank draft is marked as **Mark-A** and the copy of the application submitted by the plaintiff in the office of Sub-Registrar-V Mehrauli, Delhi-110030 has been exhibited as **Ex. PW-1/9**.
13. PW1 has next deposed that the plaintiff had been calling up the defendant, with the request to complete all the formalities and to execute the sale deed of the suit property and informed the defendant that he is still ready and willing to perform his obligation to pay the balance amount of Rs. 4,50,000/- to the defendant, however, the defendant had been making one excuse or the other, on each of such occasions.
14. PW1 has also deposed that the plaintiff on becoming apprehensive, made enquiries from the local property dealers of the area who informed him that the market price of the suit property and similarly situated properties have tremendously increased in the last couple of years and plaintiff was shocked to know that the defendant is trying to sell out the suit property to a third party and is looking for a prospective buyer and has further contacted few of the property dealers in this respect.
15. Mr Manjit Singh Mehta, PW1, has further deposed that on 5.4.2012 the plaintiff confronted the defendant with this fact and the defendant rudely

replied that nobody can stop the defendant from selling the suit property, as she is the sole and absolute owner of the suit property and further refused to execute the sale deed of the suit property in favour of the plaintiff.

16. PW1 has next deposed that since the date of execution of agreement to sell i.e. 02.04.2009 the period of more than 3 years has elapsed and during the span of 3 years the prevalent market price of the suit property has increased manifold, besides the circle rate of the land has been revised several times by the Delhi Administration and the main reason for the defendant to refuse to sell the suit property to the plaintiff, is the hike in the prices of the suit property and now the plaintiff is deprived of his legal right to purchase the suit property as he will suffer an irreparable loss to the tune of more than Rs. 50,00,000/- (Rupees Fifty Lac Only) i.e. the difference between the prevalent market price of the suit property in the on 02.04.2009 and at the time of filing the suit.
17. PW1 has also deposed that the plaintiff served a legal notice dated 07.04.2012 upon the defendant, calling upon the defendant not to dispose of or create any third party right, title or interest in the suit property and requested the defendant to accept the balance amount of Rs. 4,50,000/- and execute a sale deed for transferring the ownership of the suit property in favour of PW1. The copy of the said legal notice has been exhibited as **Ex. PW-1/10**. The Speed Post receipt dated 07.04.2012 is exhibited as **Ex. PW-1/11** and the courier receipt is exhibited as **Ex. PW-1/12**. PW1 further deposed that the Legal Notice dated 07.04.2012 was duly served upon the defendant, but the defendant has not replied to the same. The returned envelope bearing the report of post department of refusal of accept the same is exhibited as **Ex. PW-1/13**.

18. PW1 has next deposed that the plaintiff is entitled to get the agreement to sell dated 02.04.2009 enforced upon by the Court of law as per the clause 8 of the said agreement to sell as the defendant has not fulfilled her obligation of executing the sale documents in favour of the plaintiff, as stipulated by the terms and conditions of the said agreement. PW1 has also deposed that the plaintiff is further entitled to be compensated for the loss and damages caused to him due to non performance of the agreement to sell dated 04.02.2009, rise in market price of similarly situated properties, blockage of the amount of Rs. 30,00,000/- which the plaintiff could have invested in his business and earned profits there upon. Further, the circle rates of the suit property which is lying in category "C" have been increased by the State Government and due to this the plaintiff will have to pay the increased stamp duty for the execution of the sale deed of the suit property.
19. I have heard counsel for the plaintiff and perused the documents placed on record along with the plaint duly supported by the affidavit by way of evidence of the plaintiff. The evidence filed by the plaintiff has gone unchallenged and unrebutted. Plaintiff has been able to prove that an Agreement to Sell (**Ex.PW-1/2**) dated 02.04.2009 was entered into between the parties for a total sale consideration of Rs 34,50,000 with respect to sale of property no. 24, Block D, Saket, New Delhi out of which plaintiff has paid to defendant a sum of Rs 30 lacs vide five cheques exhibited as **Ex.PW-1/3 to Ex.PW-1/7** which have been encashed by the defendant and receipts acknowledging the same have been issued by the defendant.
20. Having regard to the documents placed on record plaintiff has been able to establish that the plaintiff and defendant mutually extended the time for completion of the transaction by one and a half years vide a letter dated

01.10.2010 exhibited as **Ex.PW-1/8** and time for completion of transaction expired on 01.04.2012 but the defendant did not turn up at the Registrar's office on 02.04.2012 for the execution of the sale deed in favour of the plaintiff. The plaintiff has also placed on record a copy of the demand draft of Rs 4.5 lacs dated 27.03.2012 which clearly indicates that not only was the plaintiff having funds with him to pay balance consideration but he also obtained a pay order/demand draft for the balance amount in favour of the defendant and also that the plaintiff was all along ready and willing to perform his part of the agreement. Further a written legal notice (**Ex.Pw-1/10**) dated 07.04.2012 was served upon the defendant and refused by the defendant which clearly indicates dishonest intention on part of the defendant to wriggle out of the agreement.

21. In view of the above, the present suit is decreed in favour of the plaintiff in terms of prayers (1) and (2) of para 19 and against the defendant. In case the defendant fails to execute the Sale Deed within four weeks of receipt of the judgment, it will be open for the plaintiff to seek execution of the decree. Let the decree sheet be drawn up accordingly.

G.S.SISTANI, J

SEPTEMBER 30, 2014