

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

+ **RFA No. 867/2018**

% **23rd October, 2018**

M/S FAIRDEAL INDUSTRIES AND ORS.

..... Appellants

Through: Mr. Iqbal Ashraf Rahmani,
Advocate with Mr. Mohd Rais
in person (M. No.9810338989).

versus

RAMESH KUMAR SUNEJA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No. 44154/2018(exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No. 867/2018 and C.M. No. 44153/2018(stay)

2(i). This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit

impugning the Judgment of the Trial Court dated 06.09.2018 whereby the trial court has decreed the suit filed by the respondent/plaintiff for recovery of moneys being the amount claimed towards interest for the period of retention of the principal amount of Rs. 2,90,00,000/- received by the appellants/defendants under various agreements to sell entered into between the parties with respect to the property bearing No. D-56, Okhla Industrial Area Phase-I, New Delhi. The suit was filed for recovery of Rs. 99,80,672/- and has been decreed for Rs. 11,43,925/- as under:

(i)	1.9 crores @ 9%	6 months 17 days-	Rs. 9,35,750/-
(ii)	30 lakhs @ 9%	2 months 18 days-	Rs. 75,675/-
(iii)	50 lakhs @ 9%	3 months 16 days-	Rs. 1,32,500/-
Total			Rs. 11,43,925/-

(ii). The appellants/defendants were the proposed sellers and the respondent/plaintiff was the proposed purchaser who paid a sum of Rs. 2,90,00,000/- to the appellants/defendants and this amount of Rs. 2,90,00,000/- was repaid by the appellants/defendants to the respondent/plaintiff for the appellants/defendants being granted bail

by the criminal court vide orders dated 07.07.2015 and 01.09.2015 in ***Bail Application No.1309/2015*** titled as ***Mohd. Imran v. The State (NCT of Delhi)***.

3 (i). The facts of the case are that the appellants/defendants, as proposed sellers, entered into an Agreement to Sell with the respondent/plaintiff for the suit property, firstly, on 20.10.2011 for a total sale consideration of Rs. 6,11,00,000/- with a sum of Rs. 11,00,000/- being paid as earnest money. Another Agreement to Sell dated 21.06.2013 was entered into between the parties for a total sale consideration of Rs. 6,56,00,000/- and a further payment of Rs. 25,00,000/- was made to the appellants/defendants by the respondent/plaintiff. On 30.08.2013, the respondent/plaintiff paid another sum of Rs. 25,00,000/- by RTGS to the State Bank of India, NEPZ, Noida whereby a total sum of Rs. 61,00,000/- stood paid to the appellants/defendants by the respondent/plaintiff. Till 03.03.2014, a further sum of Rs. 99,00,000/- was paid by the respondent/plaintiff to the appellants/defendants and consequently a total sum of Rs. 1,60,00,000/- stood paid to the appellants/defendants by this date.

(ii). A further payment of Rs. 15,00,000/- in cash was also made on 10/03.2014 by the respondent/plaintiff. On 19.03.2014 the respondent/plaintiff paid an amount of Rs. 1,05,00,000/- to State Bank of India, NEPZ, Noida, on the instructions of the appellants/defendants for release of the original documents lying with the bank. Thereafter, another payment of Rs. 10,00,000/- was made on 23.03.2014. Thus, undisputedly, a total payment of Rs. 2,90,00,000/- was made by the respondent/plaintiff to the appellants/defendants.

(iii). In the meanwhile, the parties had entered into an Agreement to Sell on 10.03.2014 which records the factum of the amount of Rs. 1,60,00,000/- being paid by the respondent/plaintiff to the appellants/defendants and the appellants/defendants were given time of 90 days to take necessary permission to convert the property to freehold from leasehold before completion of the transaction by the execution of a Sale Deed. Simultaneously, to the last Agreement to Sell dated 10.03.2014, a Memorandum of Understanding (*hereinafter* 'MOU') was entered into, between the parties, whereby an opportunity was granted to the appellants/defendants to sell the property at a higher rate than the agreed price between the parties of Rs.

6,11,00,000/- and for this purpose, six months time was granted to the appellants/defendants in terms of Clause 3 of this MOU dated 10.03.2014. On selling of the property, the appellants/defendants had to repay the amount paid by the respondent/plaintiff alongwith interest @ 12% per annum.

(iv). Since the appellants/defendants were stated to have cheated the respondent/plaintiff, the respondent/plaintiff lodged an FIR against the appellants/defendants under Section 420, 406, 120-B and 34 of the Indian Penal Code, 1860. In these proceedings, in terms of the orders passed by the learned Single Judge of this Court on 07.07.2015 and 01.09.2015 in ***Bail Application No. 1309/2015***, the appellants/defendants repaid the amount of Rs. 2,90,00,000/- to the respondent/plaintiff, under various installments and by taking extension of time, for getting bail. The respondent/plaintiff, thereafter, served the Legal Notice dated 31.01.2017 [Ex.PW1/8 (colly)] alongwith postal receipts claiming interest for the period for which the amount of Rs. 2,90,00,000/- was retained by the appellants/defendants paid under the Agreements to Sell, and

thereafter, the present suit seeking this claim of interest payable of Rs. 99,80,672/- was filed.

4. This Court need not discuss the defences of the appellants/defendants in detail inasmuch as there is no dispute that the appellants/defendants have repaid the amount of Rs. 2,90,00,000/- to the respondent/plaintiff and that the respondent/plaintiff did serve the Legal Notice dated 31.01.2017/Ex.PW1/8 upon the appellants/defendants claiming interest.

5(i). The first and the main issue argued by the appellants/defendants before this Court was that the suit filed by the appellants/defendants was time barred inasmuch as, the last Agreement to Sell and MOU are dated 10.03.2014 and the suit was filed after three years on 29.04.2017. Reliance was placed upon Article 25 of the Limitation Act, 1963 for dismissing the suit as being time barred. This Article 25 provides the limitation period of three years from when the interest becomes due.

(ii). The trial court has rejected this argument as per paras 6.22 and 6.23 of the impugned judgment by holding that no such defence was raised in the written statement, and no such issue was framed. Further, it

was held by the trial court that the suit was within limitation because the entitlement to claim the principal amount would only arise once the appellants/defendants had committed a breach of the agreement to sell.

(iii). In my opinion, the argument urged on behalf of the appellants/defendants of the suit being barred by limitation is misconceived because the last Agreement to Sell between the parties is dated 10.03.2014. As per para 2(c) of this Agreement to Sell dated 10.03.2014, the appellants/defendants were given a period of 90 days from the date of entering into the agreement to sell to get their property converted into freehold property for selling the same to the respondent/plaintiff. Therefore, it is only after the completion of this period of 90 days that the period of limitation would have begun for claiming back the amount on account of the frustration of the Agreement to Sell dated 10.03.2014. The limitation, therefore, will commence on 10.06.2014, and therefore, the subject suit could have been filed till 10.06.2017 and whereas the same has been filed within limitation on 29.04.2017. Thus, the suit of the plaintiff was clearly within limitation.

(iv). Another reason for holding the suit to be within limitation is that simultaneously to the Agreement to Sell dated 10.03.2014, an MOU of the same date was entered into, between the parties, whereby the parties agreed that the appellants/defendants instead of selling the property to the respondent/plaintiff, could refund the amount of Rs. 2,90,00,000/- alongwith interest @ 12% incase the appellants/defendants were successful in selling the suit property to a third party at a higher price than the amount of Rs. 6,11,00,000/-. The period granted to the appellants/defendants was of six months, in terms of Clause 3 of this MOU dated 10.03.2014, and consequently the right of the respondent/plaintiff for recovery of the amount actually would have begun only after six months from 10.03.2014 i.e. on 10.09.2014. Thus, the respondent/plaintiff could not have sued the appellants/defendants unless the period of six months expired as stated in Clause 3 of the MOU dated 10.03.2014. This period of six months till 10.09.2014 was granted to the appellants/defendants to resell their property to another buyer and to refund the amount paid by the respondent/plaintiff to the appellants/defendants alongwith interest @

12% per annum. Thus, the subject suit filed on 29.04.2017, i.e. much prior to 10.09.2017, and was well within limitation.

6. This Court may note that once a legal notice is served, then, under the Interest Act, 1978, interest is liable to be paid. In any case, interest was agreed to be paid at 12% per annum as per Clause 2 of the MOU dated 10.03.2014. Therefore, the trial court has committed no error in decreeing the suit for interest as the appellants/defendants failed to repay the claim of interest even after the serving of the Legal Notice dated 31.01.2017/Ex.PW1/8(colly).

7. In my opinion, in any case, interest is payable even in equity inasmuch as the person who retains the money of another person illegally is liable to pay interest. This has been held by the Supreme Court in the judgment in the case of *South Eastern Coalfields Ltd. v. State of M.P. and Ors.*, (2003) 8 SCC 648. The relevant para of this judgment is para 21 and the same reads as under:-

"21. Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement. Interest in equity has been held to be payable on the market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being

established which justify the exercise of such equitable jurisdiction and such circumstances can be many."

8. In my opinion, therefore, the trial court has committed no error in decreeing the suit for recovery of the suit amount which was the claim towards interest for the period of non-repayment of the amount of Rs. 2,90,00,000/- received by the appellants/defendants from the respondent/plaintiff with respect to various agreements to sell entered into for the property bearing no. D-56, Okhla Industrial Area Phase-I, New Delhi.

9. In view of the aforesaid discussion, there is no merit in the appeal. Dismissed.

OCTOBER 23, 2018/Ne

VALMIKI J. MEHTA, J