

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

% Order delivered on: 29th July, 2015

+ **CS (OS) No. 1518/2014**

SUSHILA SHAH Plaintiff
Through Mr. Bhagat Singh, Adv.

versus

VAIJANTI JAIN Defendant
Through Defendant is *ex-parte*.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present suit has been filed by the plaintiff for recovery of a sum of Rs.81,54,000/- along with pendent lite and future interest @ 18% p.a. against the defendant.
2. Admittedly the case of the plaintiff is that she acquired rights, title, interests and possession qua first floor, terrace with roof rights above it, of property No. 1091, Block E, Saraswati Vihar, Pitampura, New Delhi (hereinafter referred to as 'suit property') vide registered Agreement to Sell and General Power of Attorney both dated 26th May 2008, favoring the plaintiff who lost her only son on 22nd November 2010 at the age of 29 years. Because of shock of death of her son, plaintiff and her husband were not mentally and physically active at that time as they were in great trauma having no charm to life.

3. The defendant approached the plaintiff and purchased all the rights, title, interests and possession qua suit property from the plaintiff under registered Agreement to Sell and General Power of Attorney both dated 6th June, 2011 for a total sale consideration of Rs.54,00,000/-.

4. Sale consideration was released / paid by the defendant to the plaintiff through the following eleven cheques all drawn on Nainital Bank Ltd.:

S.No.	Cheque No. and Date	Amount
1.	250252 dated 6 th June 2011	Rs.5,00,000/-
2.	250253 dated 6 th June 2011	Rs.5,00,000/-
3.	250254 dated 6 th June 2011	Rs.5,00,000/-
4.	250255 dated 6 th June 2011	Rs.5,00,000/-
5.	250256 dated 6 th June 2011	Rs.5,00,000/-
6.	250257 dated 6 th June 2011	Rs.5,00,000/-
7.	250258 dated 6 th June 2011	Rs.5,00,000/-
8.	250259 dated 6 th June 2011	Rs.5,00,000/-
9.	250260 dated 6 th June 2011	Rs.5,00,000/-
10.	250261 dated 6 th June 2011	Rs.5,00,000/-
11.	250262 dated 6 th June 2011	Rs.4,00,000/-
Total		Rs.54,00,000/-

5. The said eleven cheques towards sale consideration were handed over at the time of registration of Agreement to sell and General Power of Attorney.

6. It is alleged that after registration of documents, the defendant and her husband took advantage of plaintiff and her husband's advance age, their condition and trauma from which they were suffering. The defendant and her husband induced the plaintiff to defer presentation of cheques and for realization of payment during the validity period and then defendant did not issue fresh cheques for payment of sale consideration. Despite numerous requests, defendant and her husband failed to honour their commitments to plaintiff to release fresh cheques for entire agreed sale consideration. Since 6th June, 2011 defendant and her husband are enjoying and utilizing the suit property.

7. After defendant's constant failure to release sale consideration, plaintiff served a legal notice of demand to the defendant who despite service of demand notice failed to release/pay the sale consideration or reply to notice and thus, the defendant turned dishonest.

8. Despite the defendant being served with summons on 2nd June, 2014, the defendant neither appeared nor filed the written statement and thus, the defendant was proceeded *ex-parte*.

9. Ex-parte evidence was filed by the plaintiff by way of her own affidavit as Ex. PW-1/X reiterating the contents of the plaint and also exhibited certain documents exhibited as Ex.PW1/1 to Ex.PW1/18 in support of its case. The documents exhibited are as follows:

- (i) Certified copy of Agreement to Sell dated 26th May, 2008 has been exhibited as Ex.PW 1/1;
- (ii) Certified copy of General Power of Attorney dated 26th May, 2008 has been exhibited as Ex.PW 1/2;
- (iii) Death certificate of plaintiff's son as issued by competent authority has been exhibited as Ex.PW1/3;
- (iv) Certified copy of Agreement to Sell dated 6th June, 2011 has been exhibited as Ex.PW1/4;
- (v) Certified copy of General Power of Attorney dated 6th June, 2011 has been exhibited as Ex.PW1/5;
- (vi) Originals of the eleven cheques has been exhibited as Ex.PW 1/6 to Ex.PW 1/16;
- (vii) Original notice dated 19th June, 2013 and original postal receipt has been exhibited as Ex.PW1/17 and Ex.PW1/18 respectively.

10. As the defendant has failed to pay and the amount remains unpaid, an enforcement of Rs.81,54,000/- is sought which includes Rs.54,00,000/- towards principal amount and Rs.27,54,000/- towards interest upto 30th April, 2014 @18% p.a. along with pendent lite and future interest @ 18% p.a.

11. Under these facts and circumstances, the plaintiff is entitled for a decree for recovery of a sum of Rs. 81,54,000/- (Rs. 54,00,000/- being the principal amount and Rs. 27,54,000/- being the interest upto 30th April, 2014) along with pendent lite and future interest @ 18% per annum from the date of filing of the suit till its realization.

12. Alternative prayer is not being granted in the light of decree for recovery being passed against the defendant
13. The plaintiff is also entitled for costs.
14. Decree be drawn accordingly. The suit is disposed of.

(MANMOHAN SINGH)
JUDGE

JULY 29, 2015