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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 1981/2012**

Date of Decision: February 5, 2015

M/S PROLATIVE ESTATE PVT LTD Plaintiff

Through Mr.L.M.Asthana & Mr.Siddhant
Asthana, Advs.

versus

M/S INDIAN GROUP REAL ESTATE & ORS Defendants

Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

CS(OS) 1981/2012

JAYANT NATH, J. (ORAL)

1. Arguments have been heard in the suit. Despite service none appeared on behalf of the defendants before this court and accordingly the defendants were proceeded ex-parte vide Order dated 18.03.2014.
2. The defendants had issued some cheques in favour of the plaintiff but the same were dishonoured by the bankers. Moreover proceedings under section 138 are also going on against the defendants as recorded vide Order dated 15.01.2015.
3. The present suit is filed for recovery of Rs.22,60,000/- with interest from the Defendant. It is the contention of the plaintiff that it is a Delhi based

company incorporated under the name of M/s Prolative Estates Pvt. Ltd. and is engaged in the business of real estate.

4. It is the contention of the plaintiff that defendant no.2 is the proprietor and in charge of defendant no.1 firm i.e. Indian Group Real Estate also engaged in the business of real estate at Bhopal.

5. It is the contention of the plaintiff that the plaintiff was interested in purchasing a land of approximately 2 acres in Bhopal, on which Defendant no.2 assured the plaintiff that he is in a position to arrange the same and requested the plaintiff to pay advance money. Believing the word of the defendant, it is stated that the plaintiff gave a cheque no.665447 dated 10.10.2011 for Rs.2,50,000/- and another cheque no.665449 dated 10.10.2011 for Rs.1,50,000/-. The plaintiff further contends that both the cheques were encashed by Defendant no.2 and he collected the total amount of Rs.4 lacs from the bank.

6. It is contended by the plaintiff that another cheque of Rs.17,00,000/- dated 13.10.2011 was also drawn in favour of defendant no.1. It is stated that the bank statement of the plaintiff company confirms the encashment of the above stated cheque.

7. It is further contended by the plaintiff that the plaintiff visited Bhopal to see the land and repeatedly requested the defendant no.2 for the same, but no interest was shown by Defendant no.2. Thereafter it is stated that Defendant no.2 gave false assurances to the plaintiff regarding the availability of the land and further demanded payment of Rs.1,60,000/- which was paid to him from his own firm account in the name of M/s Ritika Offset Printers vide cheque no.947309 dated 22.10.2011.

8. It is also contended by the plaintiff that no land was shown or bought by defendant no.2 on his behalf inspite of receiving a total payment of Rs.22,60,000/- till date. The plaintiff made several demands to refund the amount of Rs.22,60,000/- due to the plaintiff by the Defendant no.2. Defendant has defaulted in performing the same.

9. It is the contention of the plaintiff that a legal notice was issued to the defendant no.2 dated 21.04.2012 and copy of the courier receipt is enclosed as Annexure-P5 & P6. A.D. Cards have been placed on record As Annexure P7.

10. It is the contention of the plaintiff that the defendants have not made any attempts to make the payment to the plaintiff inspite of repeated demands. Hence the present suit was filed.

11. Sh. Ravi Dutt Sharma, Director of the Plaintiff Company has placed on record his evidence by way of affidavit as PW1. He has stated that two cheques were issued by the plaintiff in favour of defendant no.2 for a total sum of Rs. 4,00,000/- on 10.10.2012. The Bank statement showing the encashment of the cheques in favour of Defendant is placed on record as Exhibit PW-1/2. The affidavit also states that cheque No.665445 dated 13.10.2011 drawn on Bank of Bikaner and Jaipur, Vasant Kunj, Delhi for Rs.17 lacs was also issued in the name of Indian Group Real Estate i.e. defendant No.1 and was handed over to defendant No.2 in Delhi. The cheque it is averred has been duly encashed. It is further stated that the defendant falsely assured the plaintiff regarding availability of land and further demanded Rs. 1,60,000/- which the plaintiff paid to him from his own firm account, M/s Ritika Offset Printers vide cheque dated 22.10.2011. The said cheque was duly encashed by defendant no. 2. The Bank statement confirming the encashment is placed on record as Ex

PW-1/3. Since defendant no.2 was showing no interest in purchasing a plot for the plaintiff in Bhopal, the plaintiff asked for a reimbursement of the total amount of Rs. 22,60,000/-. It is stated that after repeated reminders and requests made by the plaintiff, the defendants failed to make good the payment of the above said amount. The plaintiff thereafter issued a legal demand notice dated 21.04.2012 to the Defendant and the same was received by the defendant. The legal notice, postal receipts and A.D.Cards are placed on record as Ex.PW1/4 to PW1/10.

12. The said witness PW-1 has also filed an additional affidavit where he has pointed out that defendant No.2 issued two cheques one for Rs.12 lacs dated 17.4.2012 and another for Rs.9,80,000/- dated 1.4.2013 in discharge of its liability to the plaintiff. The cheques it is averred were returned unpaid by the bankers of the defendant. Copy of the cheques have been enclosed with the affidavit alongwith the return memos.

13. In view of the above, the plaintiffs have succeeded to show that the defendant has taken an advance of Rs.22,60,000/- from the plaintiffs and the said amount remains unpaid. The land which was to be purchased by the defendant for the plaintiff has also not been done.

14. The suit is decreed for the said sum of Rs.22,60,000/- alongwith interest @9% per annum from the date of filing of the present suit till recovery of the amount. The plaintiff is also entitled to costs.

JAYANT NATH, J.

FEBRUARY 05, 2015

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