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

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Date of Decision: August 05, 2014

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RFA (OS) 39/2015

MANJEET SINGH KOHLI

.....Appellant

Represented by: Mr.Gurbaksh Singh, Advocate
with Ms.Richa Samlita, Advocate

versus

M/S. ANANT RAJ AGENCIES PVT. LTD.

.....Respondent

Represented by: Ms.Biji Rajesh, Advocate with
Mr.Rajeev Yadav, Advocate

CORAM:

HON'BLE MR.JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

CM No.5713/2015

1. Though no convincing grounds have been pleaded for delay of 1864 days in filing the appeal to be condoned, we do so for the reason the appellant has suffered an ex-parte decree.
2. The application is allowed.
3. Delay in filing the appeal is condoned.

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1. Mediation has failed.
2. We have heard learned counsel for the parties and have perused the record of the suit.

3. The respondent filed a suit for recovery of ₹28,80,000/- (Rupees Twenty Eight Lacs and Eighty Thousand only). The appellant and one Sh.Harmeet Singh Vohra were impleaded as defendant No.1 and defendant No.2 respectively. As per the plaint, the two defendants represented that they were the owners of land detailed in paragraph 2 of the plaint and agreed to sell the same to the plaintiff for ₹65,00,00,000/- (Rupees Sixty Five Crores only). On November 11, 2004 an agreement to sell was executed and as recorded therein the appellant and Harmeet Singh Vohra received ₹11,00,000/- (Rupees Eleven Lacs only) each vide cheque bearing No.452677 and 452678 in their respective names and additionally received ₹2,00,000/- (Rupees Two Lacs only) in cash and said fact was mentioned in the agreement to sell. It was pleaded that the defendants failed to obtain the necessary permissions which were required for sale-deed to be executed. It was pleaded that the plaintiff revoked the agreement to sell under the circumstances and vide notice dated June 04, 2005 called upon the defendants to return ₹24,00,000/- (Rupees Twenty Four Lacs only) received by them together with interest @ 24% per annum. Pleading that the defendants did not return the money the suit was instituted to recover ₹24,00,000/- (Rupees Twenty Four Lacs only) paid to the two defendants and pre-suit interest in sum of ₹4,80,000/- (Rupees Four Lacs and Eighty Thousand only).

4. Though instituted as a suit under Order XXXVII of the Code of Civil Procedure, the suit was registered as an ordinary suit. The defendants evaded service and with great difficulty the appellant who was impleaded as defendant No.1 was served for October 12, 2007 and so was his co-defendant. Service was effected on both on October 05, 2007. None of them appeared and thus were proceeded against ex-parte. The plaintiff led ex-parte evidence and proved Ex.PW-1/1 being the resolution RFA (OS) No.39/2015

by the Board of Directors authorizing Anil Sareen and Mr.Pankaj Nakra, Board Directors of the company to institute the suit and sign and verified the pleadings. The agreement to sell was proved as Ex.PW-1/2. Ex.PW-1/4 was the bank statement of account of the plaintiff showing encashment of the two cheques given to the two defendants. Ex.PW-1/5 was the legal notice dated June 04, 2005 and Ex.PW-1/6 collectively were the two postal receipts under which the legal notice was sent.

5. Testimony of the witness of the plaintiff given on oath not being challenged, vide impugned decree dated December 22, 2009 the suit was decreed but pendente lite interest and future interest was restricted to 9% per annum.

6. Appellant filed an application under Order IX Rule 13 of the Code of Civil Procedure for setting aside the ex-parte decree, which was dismissed on February 09, 2015. Thereafter, instant appeal was filed in March, 2015 challenging the decree dated December 22, 2009.

7. At the outset we must note that the appeal is liable to be dismissed on account of the appellant not impleading the co-defendant Sh.Harmeet Singh Vohra as a respondent in the appeal for the reason learned counsel for the appellant is challenging a decree which fastens joint liability on the two; apart from the liability in severalty and the argument of the appellant is that since he received ₹11,00,000/- (Rupees Eleven Lacs only) by cheque and ₹1,00,000/- (Rupees One Lac only) in cash, and so did his co-defendant, the liability of each would be to pay ₹12,00,000/- (Rupees Twelve Lacs only) with interest.

8. But we overlook said defect for the reason the only worthwhile argument advanced is as aforenoted and we find no merit in the argument because the appellant does not dispute that he and Harmeet Singh Vohra were the joint owners of the land in respect of which they had agreed to RFA (OS) No.39/2015

sell the land for a consideration of ₹65,00,00,000/- (Rupees Sixty Five Crores only) and had received ₹24,00,000/- (Rupees Twenty Four Lacs only); albeit ₹12,00,000/- (Rupees Twelve Lacs only) each. There being jointness in the liability to sell the land and ₹24,00,000/- (Rupees Twenty Four Lacs only) were received as part sale consideration to jointly sell the land, the liability to refund the part sale consideration received on being proved to be in default would be joint.

9. At this stage counsel argues another point. Counsel points out that his client has not signed the agreement to sell Ex.PW-1/2.

10. A perusal of Ex.PW-1/2 would show that after it was scribed, for some reasons unknown the appellant's signatures were not obtained thereon.

11. But, the witness of the plaintiff has deposed that both joint owners had agreed to sell the land and had received ₹11,00,000/- (Rupees Eleven Lacs only) each by two cheques and ₹2,00,000/- (Rupees Two Lacs only) in cash and since the appellant and his co-defendant did not cross-examine the witness of the plaintiff, said testimony having gone unchallenged would require the Court to hold that there was indeed an agreement to sell between the parties. Besides, an acceptance of a written offer by parole can be proved. That apart, in the appeal the appellant admits having received ₹11,00,000/- (Rupees Eleven Lacs only) by cheque and has not denied having received ₹1,00,000/- (Rupees One Lac only) in cash. The appellant has not explained as to under what transaction he received the said amount. As per the appellant he gave the money to his co-owner Harmeet Singh Vohra.

12. There is thus no merit in the appeal which is dismissed but without any order as to costs.

CM No.5712/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 05, 2015
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