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

% Judgment pronounced on*: 28th September, 2015*

\+ **CS(OS) No.1525/2015 and I.A. No.17282/2015**

SHRI VIMAL JETHA ..... Plaintiff
Through Mr.Naresh Thanai, Adv. with Mr.Himanshu Pathak, Adv.

versus

M/S PRAVEER CONSTRUCTIONS P. LTD ..... Defendant
Through Mr.Praveen Sharma, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiff has filed the present suit under Order XXXVII CPC for recovery of Rs.1,17,48,000/- along with pendent lite and future interest @ 12% per annum against the defendant.

2. Brief facts of the case as per plaint are that the defendant is company incorporated under the Companies Act and Shri Sudhir Khurana is one of its directors who has been in control of defendant and has been managing its affairs who is known to the plaintiff for the last over two decades. The defendant through its director Sh. Sudhir Khurana represented plaintiff that it had been allotted a commercial plot of land bearing No.C-1, measuring 5402 sq.mtrs. situated at Jagatpura, Jaipur (Rajasthan) by Jaipur Development Authority vide letter dated 19th September, 2005.

3. It is alleged in the plaint that the defendant further represented that it shall construct a multi-storied commercial complex and multiplex screens on the said plot of land. The project known as "Creative Corporate Park". Defendant assured that in case the plaintiff invests money in the projects of the defendant, the plaintiff shall make good profits in short span of time.

4. On the representations and assurances extended by defendant through its director Shri Sudhir Khurana, the plaintiff agreed to invest in the projects of defendant. A sum of Rs.1,37,00,000/- had been invested by the plaintiff in different projects of defendant. In lieu of investments, the following agreements were executed between the plaintiff and the defendant:-

(i) Unit Buyer Agreement dated 26th July, 2006

(ii) Unit Buyer Agreement dated 12th October, 2006

(iii) Addendum dated 12th October, 2006

(iv) Addendum dated 26th July, 2007, and

(v) Unit Buyer Agreement dated 20th November, 2007

5. As per the assurances and agreements executed between the parties, the construction was to be completed and possession was to be delivered within 36 months from the date of execution. Since the amount was invested solely on the assurances of Shri Sudhir Khurana, Director of defendant, therefore, it was agreed that defendant shall pay sum of Rs.38,890/- and Rs.30,000/- per month as assured return deemed to be expected on the amounts invested by the plaintiff, as it was recorded in the aforesaid agreements. Defendant also assured and agreed to buy back the units on the

expiry of 36 months by which time the construction was expected to be completed.

6. It is stated that Shri Snehkant Soni and Smt. Hemlata S. Soni, w/o Shri Snehkant Soni, uncle and aunt of the plaintiff, who are residents of United Kingdom, also made investments in the project of the defendant. It was solely on account of representations that the amounts of the plaintiff and abovementioned uncle and aunt were secured and would yield the assured return that the investments had been made. The defendant vide its letter dated 22nd July, 2010 addressed to various investors informed that Jaipur Development Authority had cheated it by offering to register the plot under the "sub-judice titile", as the land purchased in auction was found to be disputed one. The defendant further informed that it was in process to increase the share capital and proposed to allot the share / equity to dilute its liability. Defendant had offered investors to convert their investments as advance deposited with the defendant company for space allotment into share capital of the defendant company.

As the plaintiff was not interested in the investment, therefore, approached the defendant to refund the amount invested by him along with assured returns and interest @ 18% per annum. Defendant agreed to refund the amount invested by the plaintiff along with assured return and interest. However, the defendant showed its inability to return the amount in lumpsum, therefore, requested to refund the same in installments, to which the plaintiff agreed. Thereafter, the defendant handed over ten cheques dated 10th

July, 2011, 12th July, 2011 and 15th July, 2011 for Rs.5 lacs each totalling to Rs. 50 lacs vide its letter dated 7th June, 2011 and assured that it shall pay the balance amount shortly.

7. The defendant, however, before the due date, once again approached the plaintiff and requested him not to present those cheques as it did not have sufficient funds. The defendant further informed that it was already facing prosecution under Section 138 Negotiable Instruments Act on account of cheques issued by it to various other investors having been dishonoured. Defendant, however, assured that it shall arrange the funds and discharge the entire liability of the plaintiff. The defendant paid a sum of Rs.70,00,000/- by way of different cheques from time to time against the amounts due from it. The balance amount since had not been forthcoming, therefore, the plaintiff insisted the defendant that either it should pay the amount due to the plaintiff or plaintiff shall make a complaint and have an FIR registered against the defendant and its directors.

8. The defendant once again approached the plaintiff and agreed to return the balance amounts along with assured return in lump sum and compensation. It is stated that the projects of defendant where plaintiff had invested sum of Rs.1,37,00,000/- in all were commercial projects and the investment was expected to be increased / multiplied had the projects been completed by the defendant, therefore, considering the aforesaid, defendant agreed to pay a sum of Rs.99,00,000/- against the balance amount of Rs.67,00,000/- and assured return besides compensation of Rs. 2.5 Crores. Defendant

agreed that against a sum of Rs.99,00,000/, a sum of Rs.10,00,000/- shall be paid within three days from the understanding arrived between the parties, Rs.57,00,000/- within three months and balance of Rs.32,00,000/-to be paid within next three months. It was further agreed that in case the defendant failed to pay the amount, period of three months will be extended with the interest @ 12% p.a. The plaintiff in accordance with the settlement as aforesaid handed over two cheques bearing No. 338821 and 338822 dated 26th September, 2012 and 29th June, 2013 drawn on Axis Bank Ltd. for sum of Rs.57,00,000/- and Rs.32,00,000/- respectively against the discharge of aforesaid liability.

9. The terms of settlement were reduced in writing in the form of Memorandum of Compensation / Understanding dated 26th June, 2012 executed by the parties.

10. Admittedly, a sum of Rs. 10,00,000/- had been paid by defendant, however, two cheques dated 26th September, 2012 and 29th June, 2013 for sums of Rs.57,00,000/- and Rs.32,00,000/-, when presented were returned unpaid with the remarks 'Insufficient Funds'. The balance amount of Rs.89,00,000/- besides compensation has not been paid by defendant. The said cheques were returned unpaid, when presented to the bank. The plaintiff left with no option but to issue notices dated 28th February, 2013 and 15th July, 2013 to the defendant which was duly served in regular course of business but did not yield any result, therefore, plaintiff filed complaints under Section 138 Negotiable

Instruments Act and defendant along with its director were summoned. The complaints are pending adjudication.

11. In answer to the notice under Section 251 Cr.P.C issued by Metropolitan Magistrate, who was trying the complaint filed by the plaintiff against defendant under Section 138 of Negotiable Instruments Act, the Director of defendant, namely, Shri Sudhir Khurana, who is made accused No.2, admitted that the cheque bears his signatures, however, alleged that the same was given for security purpose in terms of agreement (Exhibit CW 1/B) i.e. Memorandum of Compensation / Understanding dated 26th June, 2012.

12. It is evident that the defendant admitted settlement/ agreement contained in Memorandum of Compensation/ Understanding dated 26th June, 2012. Thus, admitted its liability and plaintiff is entitled to a sum of Rs.89,00,000/- along with interest @12% per annum i.e. Rs.28,48,000/- totalling to Rs.1,17,48,000/- in terms of Memorandum of Compensation / Understanding dated 26th June, 2012 for the period 1st October, 2012 till 15th May, 2015.

13. The plaintiff has not claimed any relief which is beyond the ambit and scope of Order XXXVII CPC.

14. Upon the service of the said summons, the defendant had filed an application under Order 37 Rule 3(5) read with Section 151 CPC seeking for leave to defend the suit wherein it was alleged that the suit has been filed on false and frivolous claims.

15. It is admitted in the application that the plaintiff admittedly

invested amounts in the Projects of the defendant and the plaintiff committed various fundamental breaches of the agreements dated 26th July, 2006, 12th October, 2006 and the Addendum dated 12th October, 2006 and 26th July, 2007, Unit Buyer Agreement dated 20th November, 2007, MOU dated 26th June, 2012 and despite repeated attempts for an amicable settlement the plaintiff did not come forward and instead insisted upon the defendant to issue a cheque as a security until the amicable settlement was finalized and materialized. The defendant time and again called upon the plaintiff to come for amicable settlement in respect of his investment and even the plaintiff was offered to purchase shareholdings of the defendant Company to the extent of his investment but the plaintiff did not turn out and filed the present false and frivolous suit on the basis of a cheque, which is neither a debt nor liability of the defendant.

16. The abovementioned is the only ground in the application for leave to defend. The defendant has not denied the MOU who has also not denied that the cheques are not issued by the defendant. The signatures on the cheques are already admitted in the complaint filed under Section 138 of Negotiable Instrument Act. No justification has been given by the defendant that once as per MOU cheques were issued then why they were not encashed. The grounds raised in the application are moonshine. None of the ground is tenable. The application is dismissed. Consequently the suit filed for recovery of Rs.1,17,48,000/- is decreed. The plaintiff is also entitled to interest at the rate of 12% p.a. from the date of filing of the suit till the date of recovery of the said amount. The plaintiff is also entitled for cost.

Decree sheet be drawn accordingly.

(MANMOHAN SINGH)
JUDGE

SEPTEMBER 28, 2015