

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

% Order delivered on: 4th November, 2015

+ **CS(OS) No.2063/2015**

SUDERSHAN KUMAR SHARMAPlaintiff
Through Mr. Rahul Sharma Adv. with
Mr. Raj Kishor Garg, Adv.

versus

M/S ASIANS BUILDTECH ENGINEERS. Defendant
Through None.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The plaintiff has filed a summary suit under Order XXXVII CPC for recovery of a sum of Rs.30,12,671/- along with pendent lite and future interest.
2. The defendant was served at the first address on 3rd August, 2015 and at the second address on 5th August, 2015. No appearance has been filed by the defendant as per the record, within the prescribed time.
3. When the matter was listed before the Court on 15th September, 2015, one Mr. A.P. Saxena, who claimed himself as the proprietor, appeared before the Court and sought an adjournment to engage an Advocate.

4. In the interest of justice, the matter was simply adjourned to 30th October, 2015. No one appeared on the said date. This is a suit under Order XXXVII CPC. The plaintiff has already filed the original documents. This Court has no other option, but to decide the suit in the light of the averments made in the plaint and the documents placed on the record.

5. It is averred in the plaint that the plaintiff being a bonafide purchaser, in order to invest some money in housing project, came into contact with one Sh. A.P. Saxena who represented himself as Director of defendant Company and also represented Mrs. Neeru Saxena, his wife, as one of the Directors of the Company, who offered the plaintiff a floor in one of their projects at Rajapuri, Uttam Nagar, Delhi.

6. Both the parties negotiated the deal and executed a Memorandum of Understanding dated 15th January, 2014 for sale of Second Floor, admeasuring 600 sq. ft in property Plot No. 38, Rajapuri, Main Road, Gali No. 11, Uttam Nagar, New Delhi-110059 for a consideration money of Rs. 25,00,000/- paid on 15th January, 2014, which is duly acknowledged on behalf of the defendant through its Director, Sh.A.P. Saxena. The copy of the Memorandum of Understanding dated 15th January, 2014 has been filed along with the plaint as Annexure-1.

7. The time of handing over the possession of the floor was January 2015. The defendant Company in the said Memorandum of Understanding also offered a buy back offer as detailed in the Memorandum of Understanding dated 15th January, 2014.

8. The plaintiff accepted the buy back offer of the defendant Company which was duly accepted by the defendant as well as by the plaintiff and consequently the defendant issued two post dated cheques bearing No. 910885 and 910886 both dated 15th January, 2015 for Rs.25,00,000/- (principal amount) and Rs. 3,75,000/- (interest @15% p.a. for one year). As per the case of the plaintiff, the defendant asked the plaintiff to present both the cheques only after confirmation from the defendant Company. The counter foils and cheques No. 910885 and 910886 both dated 15th January, 2015 have been filed along with the plaint as Annexure - 2 and 3. On 16th January, 2015, the plaintiff contacted the defendant for presenting the cheques for encashment, however, the Director of defendant namely Sh. A.P. Saxena asked not to present the said cheques and also prayed the plaintiff to present the same in the first week of February,2015. Again the plaintiff asked the defendant for presenting the cheques with his banker but the defendant kept the matter lingering on and assured that the plaintiff shall be paid interest @15% p.a. for the period beyond 15th January,2015 upto the date of realization of the aforesaid two cheques for Rs.25,00,000/- and Rs.3,75,000/- .The plaintiff finally being left with no alternative presented both the cheques for Rs. 25,00,000/- and Rs.3,75,000/- with his bankers and both the cheques were returned unpaid with the bank's endorsement "Funds Insufficient" and "Instrument Outdated/STA". The copies of Cheque Return Memo's have been filed along with the plaint as Annexure - 4.

9. The plaintiff thereafter contacted the defendant but the directors of the defendant namely Sh. A.P. Saxena and his wife Mrs. Neeru Saxena refused to meet the plaintiff and the plaintiff after finding himself helpless got served a legal notice dated 11th May, 2015 to the defendant and Mrs. Neeru Saxena (Director) under Section 138 of Negotiable Instruments Act, 1881 for the dishonor of cheque of Rs. 3,75,000/- through Regd. AD as well as speed post at both the address mentioned in memo of parties. The office copy of the legal notice dated 11th May, 2015 along with postal receipts has been filed along with the plaint as Annexure - 5.

10. The legal notice sent on the address of Rajapuri was returned unserved with the postal endorsements "Premises found locked". The original returned envelopes have been filed along with the plaint as Annexure – 6.

11. On 12th May, 2015 another legal notice was sent to both the directors of defendant namely Sh. A.P. Saxena and Mrs. Neeru Saxena demanding the sum of Rs. 25,00,000/- due against cheque No. 910885 dated 15th January, 2015 along with interest @ 12% per annum amounting to Rs. 1,00,000/- for the period 15th January, 2015 to 15th May, 2015. The copy of legal notice dated 12th May, 2015 along with postal receipts has been filed along with the plaint as Annexure-7. The notices dated 12th May, 2015 sent on C-301, Badhwar Apartments, Sector-6, Dwarka were served on both the directors, however, the other notices were returned with postal endorsement "Premises Locked". The original envelopes and the postal and courier tracking

reports have been filed along with the plaint as Annexure- 8 and Annexure – 9 respectively.

12. In terms of the Memorandum of Understanding dated 15th January, 2014, the entire payment shall be refunded along with interest at the rate of 15% per annum. Therefore, the total amount due as on 29th June, 2015 has been computed as under:

Principal paid on 15.01.2014	25,00,000/-
Interest (15.01.2014 to 15.01.2015) @15% per annum	3,75,000/-
Interest (15.01.2015 to 29.06.2015) For 134 days @ 15% p.a.	1,37,671/-
TOTAL AMOUNT	30,12,671/-

13. The claim raised by the plaintiff is uncontested. In view of the above, the suit of the plaintiff is decreed for a sum of Rs. 30,12,671/- against the defendants. The plaintiff is also entitled for pendent lite and future interest @ 12% per annum from the date of filing of the suit till the date of payment. The plaintiff is also entitled for costs.

14. Decree be drawn accordingly.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 04, 2015