

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

% *Judgment delivered on: May 21, 2014*

+ **CS(OS) No.773/2013**

ANUP SHARMA & ORS Plaintiffs
Through Mr.Vinay Kr. Garg, Adv. with
Mr.Neeraj Kr. Sharma & Mr.Amit
Srivastva, Advs.

versus

NAGENDRA PRASAD YADAV Defendant
Through Defendant already *ex parte*.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The present suit has been filed by the plaintiffs for specific performance of agreement to sell dated 30th August, 2012 and permanent injunction against the defendant.
2. The summons in the suit was issued to the defendant on 29th April, 2013. Defendant entered appearance on 25th October, 2013, however, thereafter neither did the defendant appear in the matter nor did he file the written statement. Accordingly, he was proceeded *ex parte* vide order dated 15th April, 2014 and the plaintiffs were directed to lead evidence by filing affidavits of all the witnesses.
3. It is the case of the plaintiffs that the plaintiffs and defendant entered into an agreement to sell and purchase dated 30th August, 2012 in respect of

property bearing No. C- 35, area measuring 73 sq. yds., with roof rights, out of Khasra No.47, situated at Gali No.2, Shashi Garden, Patpar Ganj, Delhi-110091 (hereinafter referred to as “the suit property”) for a total sale consideration of ₹45 lacs out of which the plaintiffs paid ₹10 lacs in cash on the same day to the defendant as part payment. The balance amount of ₹35 lacs was agreed to be paid to the defendant on or before 2nd January, 2013 when the sale deed was to be executed and vacant possession of the suit property was to be transferred to the plaintiffs.

4. It is stated that on 2nd January, 2013, while the plaintiffs were ready and willing to perform their part of the obligation, the defendant for his personal difficulties expressed his inability to execute the sale deed and handover the vacant physical possession of the suit property to the plaintiffs. Therefore, it was agreed in writing that the date of 2nd January, 2013 be extended to 6th February, 2013.

5. On 5th February, 2013, the plaintiffs informed the defendant that the plaintiffs were prepared to complete their obligation under the agreement and had got prepared two demand drafts bearing No.280452 and 280453 of ₹17,50,000/- each, both dated 5th February, 2013 from Bank of India, Mayur Vihar, Delhi in the name of the defendant for the payment of the balance amount for execution of the sale deed.

6. On 6th February, 2013, after due intimation to the defendant, the plaintiffs approached the office of the Sub-Registrar, Shastri Nagar, Delhi with the drafts of the balance amount, where their presence was recorded, however, the defendant did not turn up. After returning from the office of the Sub-Registrar, on talking to the defendant, the defendant promised to

execute the sale deed on 14th March, 2013 and vacate and handover the possession of the suit property to the plaintiffs on 13th March, 2013.

7. It has been stated that in the first week of March, 2013, plaintiff No.1 came to know that the defendant was, in fact, trying to enter into further agreements with regard to the suit property. The plaintiff No.1 served the defendant with a legal notice dated 15th March, 2013 calling upon him to abide by the terms of the agreement dated 30th August, 2012 and intimate within seven days of receipt thereof, the place and date of execution of the sale deed for the suit property in favour of the plaintiffs. The track record of the said notice sent through speed post revealed that the said notice was delivered at the address of the defendant on 19th March, 2013, however, the same was not replied to.

8. Accordingly, the present suit was filed by the plaintiffs against the defendant on 15th April, 2013. It is stated by the plaintiffs that they are ready and willing to purchase the suit property in terms of the agreement dated 30th August, 2012 and all the three plaintiffs together have sufficient funds available with them to perform their obligation thereunder, so the suit be decreed in their favour against the defendant in terms of the prayer in the suit.

9. The plaintiffs along with Mr.Gopi Chand Bansal and Mr.Dinesh Bansal were examined as PW-1 to PW-5 and the plaintiffs' evidence was closed vide order dated 7th May, 2014 and the matter was listed before this Court for directions.

10. The plaintiffs tendered evidence by way of affidavits of PW-1 to PW-5 as Ex.PW1/1 to Ex.PW5/1, respectively. Plaintiff No.1 examined himself as PW-1 and relied upon the documents marked as Ex.PW-1/A to

Ex.PW-1/K and Mark A & B. The details of the said documents are as under:

- Exhibit PW1/A: Original Agreement to Sell and Purchase dated 30th August, 2012
- Exhibit PW1/B: Original Undertaking by defendant
- Exhibit PW1/C (OSR) & Exhibit PW1/D (OSR): Copies of passbooks reflecting entries in respective accounts of Smt. Radha Bansal and Smt. Meena Bansal
- Exhibit PW1/E & Exhibit PW1/F: Original pay-in slips for purchase of two bank drafts for ₹17.50 lacs each
- Exhibit PW1/G: Original slip No. 12722 dated 6th February, 2013 recording presence of the plaintiff no.1 at the office of the Sub-Registrar, Shastri Nagar, Delhi
- Exhibit PW1/H: Original notice dated 15th march, 2013
- Exhibit PW1/I & Exhibit PW1/J: Original postal receipts dated 16th March, 2013
- Exhibit PW1/K: Site-plan of the suit property
- Mark A: Copy of demand draft bearing No. 280452 dated 5th February, 2013
- Mark B: Copy of demand draft bearing No. 280453 dated 5th February, 2013

11. The statement made in the affidavit of plaintiff No.1 is supported by the affidavits of other witnesses being PW-2 to PW-5.

12. The suit was first time listed before Court on 29th April, 2013 when the summons were issued in the main suit and notice in the interim

application. After recording the reasons, the *ex parte* ad-interim order was passed by the Court, restraining the defendant from selling, transferring, alienating or in any manner creating any third party interest with regard to the suit property. The defendant was represented by the counsel, who appeared before Court on 25th October, 2013. However, no written statement was filed. Further two weeks time was granted but the same was not filed. The right to file the written statement was closed and the defendant was proceeded *ex parte* on 15th April, 2014. The entire evidence of the plaintiffs has gone un rebutted.

13. In view of the above, the plaintiffs are entitled for a decree of specific performance and permanent injunction with regard to the agreement to sell dated 30th August, 2012 in favour of the plaintiffs and against the defendant who is directed by himself or through agents, successors-in-interest or any other person competent on his behalf to execute the Sale Deed/Conveyance Deed in respect of the suit property, i.e. bearing No. C- 35, area measuring 73 sq. yds., with roof rights, out of Khasra No.47, situated at Gali No.2, Shashi Garden, Patpar Ganj, Delhi-110091 in favour of the plaintiffs after receiving the balance amount of ₹35 lacs within four weeks. In failure to do so, liberty is granted to the plaintiffs to file an appropriate application to execute the Sale Deed through an Officer of this Court in accordance with law. The defendant, his successors-in-interest, assigns, agents or any other person on his behalf is permanently restrained from selling, alienating, assigning, transferring, parting with possession of or in any manner creating any third party interest in respect of the suit property, till the time the sale deed is executed in favour of the plaintiffs.

14. The suit is decreed with costs. Decree be drawn accordingly.

15. Copy of the judgment be sent to the defendant forthwith for the purpose of compliance.

(MANMOHAN SINGH)
JUDGE

MAY 21, 2014