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

% *Date of Decision : August 08, 2016*

\+ **RFA(OS) 27/2016**

DIPAK ARORA & ANR ..... Appellants
Represented by: Mr.Prashant Mendiratta, Advocate

versus

VIJAY BHUSHAN ARORA & ANR ..... Respondents
Represented by: Ms.Mala Narayan, Advocate with Mr.Raghav Shekhar, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

CM No.11839/2016

Allowed subject to just exceptions.

RFA (OS) No.27/2016

1. The appellants are husband and wife. Admitted case of the parties is that Vijay Bhushan Arora : Respondent No.1 who is the plaintiff in the suit and the appellant No.1 Deepak Arora, impleaded as defendant No.1 in the suit as also Ashok Kumar Arora impleaded as defendant No.3 in the suit respondent No.2 in the appeal are the children of late Raj Kumari Arora and K.N.Arora. Appellant No.2 is the wife of Deepak Arora.

2. The deceased parents acquired ownership of plot bearing Municipal No.S-335, Greater Kailash-II under a sale-deed dated October 23, 1972 executed by M/s.DLF Ltd. in their name and on demise of K.N.Arora on April 13, 1989 the three sons and his daughter Mohini having executed a

relinquishment deed in favour of their mother, Raj Kumari became the owner of the land. A three-storeyed structure, comprising a ground, first and second floor was constructed on the plot. During her lifetime, on June 04, 1993 Raj Kumari executed a gift deed pertaining to the ground floor in favour of Vijay Bhushan. She executed a will on June 02, 1998 bequeathing the first floor to Ashok Arora and the second floor to Deepak Arora and Nupur Arora jointly.

3. On May 31, 2011 the three brothers, with Nupur Arora joining in as a party entered into a memorandum of understanding, accepting the gift deed executed by the mother in favour of Vijay Bhushan as also the will dated June 02, 1998 and the factum of her death on August 08, 1999. As per the said memorandum of understanding it was agreed between the three brothers and Nupur that the existing building would be demolished and on a stilt parking a four storeyed structure comprising ground, first, second and third floor would be constructed by Vijay Bhushan Arora. The reconstructed property would be owned by the three brothers with Nupur jointly with Ashok, in the manner prescribed in clause 16 of the agreement i.e. the ground floor and the third floor with roof rights together with 50% undivided share in the land to be that of Vijay Bhushan. The first floor and the second floor with 25% undivided share in the land to be that of Ashok Kumar and Deepak Arora plus Nupur Arora jointly. It was also agreed that Vijay Bhushan shall pay ₹50,00,000/- each to Ashok Arora, Deepak Arora and his wife Nupur Arora i.e. the latter two jointly.

4. Clause 11 of the memorandum of understanding notes that the second floor, belonging to Deepak Arora and Nupur Arora as per the will executed by the mother had been mortgaged and would be redeemed by them at their cost. As per clause 13 the building had to be completed within 15 months of it being demolished and if not completed within 15 months Vijay Bhushan shall pay ₹15,000/- per month to his two brothers. Clause 11 reads as under:-

"11. That the fourth party undertakes that before the handing over of the possession by him to the first party he shall get the mortgage on the second floor redeemed at his own cost and expenses. The fourth party shall be solely responsible for completing all the formalities for getting the property cleared from the mortgage with the State Bank of Hyderabad, Delhi. In the alternative, it shall be open to the fourth party to obtain a No Objection Certificate from State Bank of Hyderabad, Delhi, to which it has mortgaged the second floor of the said property, for demolition of the existing structure and reconstruction of the same as per the terms of the present agreement."

5. The terms of payment i.e. ₹50,000,00/- each to be paid by Vijay Bhushan to Ashok and Deepak plus Nupur was recorded in a schedule to the agreement. It reads as under:-

Stage of Construction	Amount to be Paid
At the time of handing over the possession by the second party, third party and fourth party	₹10,00,000/- to the second party; AND ₹10,00,000/- to the third party and fourth party collectively
On the completion of the structure of the building over the said property	₹10,00,000/- to the second party AND ₹10,00,000/- to the third party and fourth party collectively
On execution/registration of the necessary documents of title by the second party, third party and fourth party in favour of the first party	₹30,00,000/- to the second party AND ₹30,00,000/- to the third party and fourth party collectively

6. Relevant would it be to note that prior to the date of the execution of the MOU, on May 20, 2011 Vijay Arora gave ₹1.8 lakhs to Deepak Arora and this he claims he gave to avoid coercive action initiated by Punjab National Bank and State Bank of Hyderabad against Deepak who had mortgaged the second floor of the house to the said two banks.

7. The MOU contemplates the first tranch of payment to be made when possession of the first and the second floors by the two brothers and the wife of one was to be handed over to Vijay Bhushan. But Vijay Bhushan gave ₹3.2 lakhs by cheque on June 06, 2011 and ₹5 lakhs by cheque on June 17, 2011 to Deepak Arora. On October 15, 2011 Vijay Bhushan gave another ₹2 lakhs by cheque to Deepak Arora and Nupur Arora.

8. Thus it is the case of Vijay Bhushan that he gave ₹12 lakhs to his brother Deepak Arora and it is his case that he gave the money so that his brother could clear the outstanding with the two banks with whom the second floor had been mortgaged.

9. Vijay Bhushan instituted the suit impleading Deepak his wife Nupur as defendants No.1 and 2 and Ashok as defendant No.3. Decree in sum of ₹42.75 lakhs was prayed for against Deepak and Nupur. It comprises return of ₹12 lakhs as refund and the remainder as damages on account of various expenses incurred to obtain approvals etc.

10. Vijay Bhushan claimed a mandatory injunction against his two brothers that they should sell their two floors to him at the prevailing market rate, a relief which learned counsel for Vijay Bhushan fairly concedes may not stand the scrutiny of the law. But we are not concerned with the same.

11. Challenge in the appeal is to the order dated December 15, 2015 decreeing claim of Vijay Bhushan against the appellants in sum of ₹12 lakhs together with interest @ 18% from the date payment was received till realization.

12. The learned Single Judge has relied upon the judgments reported as 2000 (7) SCC 120 <u>*Uttam Singh Duggal & Co. Vs. United Bank of India*</u>, 2000 (56) DRJ 590 <u>*Zulfikar Alikhan Vs. Straw Products Ltd. & Ors.*</u>, 207 (2014) DLT 172 <u>*M/s. Kusum Enterprises & Ors. Vs. Vimal Kocchar & Ors.*</u> and 2003 (6) SCC

595 Roop Kumar Vs. Mohan Khadani to hold that a decree can be passed on admission if a plea raised in the written statement canot be proved because law prohibits such evidence to be led.

13. Indeed, the principle of law has been rightly culled out by the learned Single Judge. If a contract is reduced into writing no oral evidence can be led to contradict a term of the written contract.

14. In the written statement filed the appellants have pleaded that their signatures were obtained on the MOU by fraud and misrepresentation. What was the fraud and what was the misrepresentation has not been pleaded. It is not enough to simply plead fraud or misrepresentation. Unless particulars thereof are disclosed in the pleadings, the plea has to be ignored. It is pleaded in contradiction to the plea of fraud and misrepresentation that when the MOU was executed Vijay Arora had agreed to clear the loan with the bank. Now, this plea is in clear contradiction of clause 11 of the MOU which clearly records that the appellants shall clear the bank loan and redeem the mortgage of the second floor. In the written statement the appellants have denied the validity of the gift deed dated June 04, 1993, overlooking that in the MOU the appellants have clearly admitted that Vijay Bhushan acquired title to the ground floor of the property under the gift deed in question.

15. The learned Single Judge has thus rightly held that such a defence cannot be made good at the trial because no evidence can be led to prove the same. The decree on admission has rightly been passed in view of the terms of the MOU and the admission that the appellantshad taken ₹12 lakhs from Vijay Arora.

16. The rate of interest @ 18% is excessive. There is no agreement between the brothers that ₹12 lakhs advanced would bear interest. The payment of interest would therefore be governed by Interest Act, 1978. There is no

pleading that a notice was served for payment of interest. Therefore, interest would accrue on the sum from the date when the suit was instituted and the rate would be simple interest @ 8% per annum which is being offered by the banks on fixed deposits.

17. The appeal is partially allowed. Impugned decree is modified, in that ₹12 lakhs payable by the appellants to respondent No.1 is upheld with rate of interest being 8% per annum on said sum from date of suit till realization.

18. Parties shall bear their own costs in the appeal.

<u>CM Nos.11837-38/2016</u>

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

AUGUST 08, 2016
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