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

+ CS(OS) 442/2016

VINOD KUMAR ARORA & ANR Plaintiffs
Through: Mr. Arun Vohra, Adv.

Versus

M/S CANDOUR INFRASTRUCTURES PVT LTD
& ORS Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **05.09.2016**

IA No.10844/2016 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CS(OS) 442/2016 & IAs No.10842/2016 (u/O 39 R-1&2 CPC) & 10843/2016 (u/O 38 R-5 CPC)

3. The two plaintiffs have instituted this suit under Order XXXVII of Code of Civil Procedure, 1908 (CPC) for recovery of Rs.2,04,00,000/- jointly and severally from the three defendants.

4. The case *inter alia* of the plaintiffs is (i) that the defendant No.1 company of which the defendants No.2&3 are directors had vide agreement to sell dated 26th March, 2016 agreed to sell property No.H-31, Ashok Vihar Phase-I, Delhi to the two plaintiffs; (ii) that as per the terms of the said

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agreement, the plaintiffs had paid earnest money of Rs.2 crores i.e. Rs.1 crore in cash and Rs.1 crore vide two cheques of Rs.50 lakhs each and in the event of the agreement remaining unfulfilled for the reasons attributable to the defendant No.1 company, the plaintiffs had a choice, either to sue for specific performance or for recovery of double of the amount of the earnest money i.e. for Rs.4 crores; (iii) that the defendants have misrepresented facts to the plaintiffs and the property was mortgaged for much more than what was disclosed and the plaintiffs upon learning of the same, stopped the payment of the two cheques for Rs.50 lakhs each; (iv) that thus, out of the earnest money of Rs.2 crores which was agreed to be paid, only a sum of Rs.1 crore paid by the plaintiffs in cash was received by the defendants; (v) that since the agreement had remained unfulfilled for reasons attributable to the defendants, the plaintiffs is entitled to double of the amount of Rs.1 crore i.e. Rs.2 crores; (vi) that a sum of Rs.4 lakhs is claimed towards interest till the date of institution of the suit.

5. I have enquired from the counsel for the plaintiffs as to how the suit is maintainable under Order XXXVII of CPC.

6. The counsel for the plaintiffs states that the suit be entertained as an ordinary suit.

7. I have further enquired from the counsel for the plaintiffs as to how the plaintiffs can be entitled to recover double of the amount paid inasmuch as the said agreement was to be effective if the plaintiffs paid the amount of Rs.2 crores and which the plaintiffs have admittedly not paid.

8. The counsel for the plaintiffs states that the suit be treated as a suit for recovery of Rs.1 crore with interest only.

9. The suit for recovery of Rs.1 crore with interest would be below the minimum pecuniary jurisdiction of this Court and will have to be tried by the Court of the District Judge.
10. The counsel for the plaintiffs is agreeable thereto as well and states that the suit be sent to Court of appropriate jurisdiction.
11. Accordingly, in exercise of the powers under Section 24 of the CPC, the suit file is transferred to the Court of the District Judge (New Delhi), Patiala House Courts, New Delhi within whose jurisdiction the registered office of the defendant No.1 company is stated to be situated.
12. The plaintiffs to appear before the Court of the Additional District Judge / District Judge (New Delhi), Patiala House Courts, New Delhi on 27th September, 2016.
13. The plaintiffs to, on that date, also present the amended plaint in accordance with the aforesaid concessions made and on which amended plaint, the learned Additional District Judge / District Judge shall take further proceedings with respect thereto.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 05, 2016

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