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

+ **CS(OS) 1261/2013 & I.A.No.10157/2013**

VEENA GUPTA

Through

..... Plaintiff

Mr.Rahul Gupta with
Mr.Shekhar Gupta, Advocates.

versus

TARA CHAND

Through

..... Defendant

None

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Date of Decision : 07th November, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral)

1. Present suit has been filed by the plaintiff seeking specific performance of agreement to sell dated 3rd March, 2013 with respect to suit property being agricultural land admeasuring 10 Bigha and 06 Biswas comprised in khasra No.5/1/1/2, in village Pandwala Kalan, New Delhi for a total consideration of Rs. 4,29,17,000/-. The Agreement to Sell dated 03rd March, 2013 is reproduced hereinbelow:-

*“I, Tara Chand s/o Mehar Chand r/o Pandwala Kalan,
intend to sell my below land @ Rs.2 Crore per Acre.*

<i>Land Khatoni</i>	<i>: 39/36</i>
<i>Area</i>	<i>: 10 Bighas 6 Biswa</i>
<i>Rate</i>	<i>: Rs.2 Crore/Acre</i>

On my land a suit is going in Delhi High Court 945/2007 wherein stay granted on 23/6/2007 is recalled.

The buyer is Veena Gupta through her son Rahul Gupta r/o A-13, C.C. Colony, Delhi-7.

After today, i.e. 3.3.2013 that is after payment of Rs.10 Lakh an application will be made to court after which further payment to 10% of total consideration shall be paid. Further to payment of 10% within next six months the execution of sale deed shall be done.

*Sd
03/03/13*

Further my daughter has filed suit against me for separation. I have spoken to all my kids i.e. five daughters and two sons for selling the land, they have agreed to have no objection for sale.

I have received Rs.10 Lakh as consideration under agreement to sell.

Insufficiency of stamp duty can be set off by further payment.

I further agree that I will only sell the land I will not return the money.

*Sd.
03/03/13
Tara Chand
s/o Late Mehar Chand
V.P.O. Pandwala
New Delhi-43.”*

2. It has been averred in the plaint that out of the total sale consideration rupees ten lakhs was paid by the plaintiff at the time of

signing of the agreement. Another payment of Rs.42,91,700/- was paid by the plaintiff to the defendant vide pay order No.195634 dated 28th May, 2013 drawn on Corporation Bank, Connaught Circus, New Delhi 110001. However the said pay order was not encashed by the defendant. The said pay order is still lying with the defendant.

3. Since the defendant was not coming forward to execute the sale deed the plaintiff issued a legal notice dated 1st June, 2013 to the defendant calling upon him to execute the sale deed. The said legal notice was also served on the defendant by Mr. Rajiv Sharma, Advocate/Oath Commissioner. As neither any reply was given by the defendant to the legal notice dated 1st June, 2013 nor the defendant came forward to execute the sale deed, the plaintiff filed the present suit.

4. On the very first day i.e. 2nd July, 2013 when the matter was listed before this Court the plaintiff herself through her counsel offered to deposit the balance sale consideration and accordingly deposited the balance sale consideration of Rs.3,76,25,300/- with the Registry of this Court on 15th July, 2013. The said amount of Rs.3,76,25,300/- is lying deposited in an interest bearing FDR with this Court.

5. The defendant filed his written statement on 12th November, 2013 wherein the defendant did not deny the execution of agreement to sell dated 3rd March, 2013 and receipt of amount of Rupees Ten lakhs towards part sale consideration. Though defendant denied the receipt of Rs.42,91,700/-, yet, the learned counsel for the defendant admitted before this Court, as recorded in the order dated 7th August,

2013, that the pay order of Rs.42,91,700/- had not been utilized by the defendant.

6. During the pendency of the suit the defendant Mr. Tara Chand expired on 23rd February, 2014 and vide order dated 18th July, 2014 the legal heirs of Mr. Tara Chand were brought on record.

7. Issues were framed by this Court on 3rd November, 2014.

8. Vide order dated 26th April, 2016 the legal heirs of the defendant were proceeded *ex-parte* as they had not been appearing.

9. During the pendency of the suit a compromise was arrived at between plaintiff and defendant No.1 (d) and No.1 (e) viz. Ms. Sunita and Ms. Nirmala both daughters of late Mr. Tara Chand. By the said compromise defendant No.1 (d) and 1 (e) agreed to sell their 1/8th share each in the suit property to the plaintiff for a total sale consideration of Rs.46,00,000/- each. It was agreed that the said amount shall be released in favour of the said defendants at the time of execution of the sale deed from the amount already lying deposited before this Court. In this regard an application being I.A. No. 6537/2016 was filed jointly by the plaintiff and defendant No.1 (d) and No.1 (e) to record the compromise. The said application was allowed by this Court vide order dated 23rd May, 2016 and the suit was decreed in terms of the said compromise application against defendant No.1 (d) and No.1 (e).

10. Plaintiff filed her evidence by way of affidavit dated 25th February, 2017 and exhibited all her documents.

11. Learned counsel for the plaintiff states that the plaintiff has always been ready and willing to perform her part of obligation under

agreement to sell dated 3rd Marcy, 2013 and is still ready and willing to perform her obligation under the said agreement. He states, in fact nothing remains to be performed on the part of plaintiff as the sale consideration amount of Rs.3,76,25,300/- is lying deposited with this Court since 15th July, 2013 in an interest bearing FDR. It is submitted that in the last four years an interest amount of over Rs.1,00,00,000/- has accrued on the said amount.

12. At this stage, learned counsel for the plaintiff states that the interest that has accrued on the amount deposited by the plaintiff in this Court should be refunded to the plaintiff as possession of the suit property has not been handed over to the plaintiff till date. In support of his submission he relies upon the judgment of the Division Bench of this Court in **Bal Krishan Gupta & Anr. Vs. Vikas Aggarwal & Anr., 211 (2014) DLT 206 (DB)** wherein it has been held as under:-

“27. The position in law, on the subject of issuance of direction to a plaintiff/purchaser in a suit for specific performance of an Agreement to Sale of immovable property to deposit the balance sale consideration in Court can thus be culled out as under:-

(i) Section 16(c) of the Specific Relief Act, 1963 provides that specific performance of a contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him. It is thus necessary for a plaintiff in a suit for specific performance, to aver and prove that he, on the stipulated date, was in a position to pay the balance sale consideration and had tendered or was ready and willing to tender the same to the seller;

(ii) however the Explanation (i) of Section 16(c) supra provides that where the contract involves the payment of money, it is not essential for the plaintiff to actually tender

to the defendant or to deposit in the Court any money except when so directed by the Court. Thus the plaintiff in a suit for specific performance, is not required to as a matter of routine and as a condition to the maintainability of the suit, deposit the balance sale consideration in the Court, though the Court is empowered to direct the plaintiff to do so;

(iii) if as per the agreement of which specific performance is sought, the plaintiff/purchaser was required to part with the balance sale consideration only against delivery of title and physical possession of the property, to make such a plaintiff/purchaser part with the balance sale consideration without delivery of title and possession to him would be contrary to the agreement and the jurisdiction of specific performance thereof;

(iv) to hold that though as per the agreement the plaintiff/purchaser is liable to part with the balance sale consideration only against the delivery of title and possession but to test his readiness and willingness, he can be directed to part therewith even without delivery of title and possession, would amount to the Court making a new contract and which is beyond the scope of jurisdiction of specific performance;

(v) a direction to the plaintiff/purchaser to deposit balance sale consideration in the Court as a condition to maintainability of the suit for specific performance can be made only where the Court, for reasons to be recorded, entertains a doubt about the readiness and willingness of the plaintiff/purchaser. Only where the Court feels that though an averment as postulated in Section 16(c) is made, but the plaintiff may not have the money to pay the balance consideration, can the Court, to satisfy itself about the truthfulness about the averment, direct to deposit the money in Court. This course is however to be adopted rarely;

(vi) the question of payment otherwise would arise only after the trial of the suit and when the rights of the parties

are determined and such a direction should be issued when the final decree is passed and not at an earlier point of time; and

(vii) direction to the plaintiff/purchaser to deposit the balance sale consideration in the Court can also be made as a condition for granting interim relief sought of restraining the defendant/seller from, during the pendency of the suit, dealing with the property agreed to be sold or to balance the equities in appropriate cases but again, not as a matter of routine i.e. only where the readiness and willingness of the plaintiff/purchaser is in doubt and again, rarely; the effect of non-deposit inspite of such direction in such cases will only be vacation of the interim order or applicability of Section 52 supra and not to ipso-facto presume the plaintiff/purchaser to have been not ready and willing.”

13. However, this Court is of the opinion that the aforesaid judgment only stipulates that the deposit of balance sale consideration is not a pre condition to either entertain the suit or to grant stay/injunction. Since in the present case, the plaintiff despite being aware of the earlier suit proceedings had entered into the Agreement to Sell dated 3rd March, 2013, this Court is of the view that the defendants are entitled to the interest that has and that will accrue on the deposit made by the plaintiff as and when a sale deed is executed in favour of the plaintiff.

14. However, as the plaintiff's pay order of Rs. 42,91,700/- has not been utilized by the defendant, the plaintiff as well as her banker are at liberty to cancel the said pay order forthwith. The plaintiff is directed to deposit the balance sale consideration of Rs. 42,91,700/- with the Registry of this Court within eight weeks.

15. In the given facts and circumstances of the present case, it is clear that doctrine of lis pendens under Section 52 of the Transfer of Property Act, 1882 shall apply in view of the previous suit for relief of specific performance being *CS(OS) No.945/2007 titled as Surrender Singh Vs. Tara Chand* already pending in respect of the same subject matter property as in the present suit.

16. Consequently, the suit of the plaintiff is decreed for the relief of specific performance against the defendants in respect of the suit property being land measuring 10 bighas and 6 biswas in Khasra No.5/1/1/2 in revenue Estate of Village Pandwala Kalan, New Delhi. From the amount deposited, a sum of Rs. 46,00,000/- each is to be released in favour of defendant No. 1(d) and 1(e) and another amount of Rs. 3,21,87,750/- to be released in favour of other six defendants being defendants No.1(a), 1(b), 1(c), 1(f), 1(g) and 1(h) at the time of execution of the registered sale deed in favour of the plaintiff and handing over of the possession of the suit property. The calculation of the amount payable to the defendants is as under:-

Total Sale consideration	=	Rs. 4,29,17,000/-
Remaining amount after deduction of Rs 10,00,000/- paid at the time of signing of the agreement	=	Rs.4,19,17,000/-
Amount payable to Defendant Nos.1(d) and 1(e)	=	Rs. 92,00,000/- (@46,00,000/- each)
Remaining amount of Rs 3,27,17,000/- payable to defendant Nos.1(a), 1(b), 1(c), 1(f), 1(g) and 1(h).	=	Rs.54,52,833.33-

17. The said decree, as stated hereunder, shall be subject to the final decision in suit bearing CS(OS) No.945/2007 as above. In case the plaintiff in the said suit, i.e., CS(OS) 945/2007, succeeds, then the plaintiff herein shall receive back the amount lying deposited by the plaintiff with this Court's Registry along with upto date interest. However, if the suit of the plaintiff being CS(OS) No.945/2007 as above is dismissed then only the present decree granted in favour of the plaintiff in the present suit shall become executable thirty days thereafter and defendants in the present suit are directed to execute the sale deed in favour of the plaintiff in respect of the suit property as above being land measuring 10 bighwas and 6 biswas in Khasra No.5/1/1/2 in the revenue Estate of Village Pandwala Kalan, New Delhi, on receipt of the balance sale consideration amount from the plaintiff lying deposited before this Court along with interest accrued thereon. The interest amount shall be distributed amongst the legal heirs of original defendant No.1 in proportion to their ownership of the suit property.

18. Decree sheet be drawn accordingly leaving the parties to bear their own costs. A copy of this judgment is directed to be placed by learned counsel for the plaintiff before the Court hearing CS(OS) 945/2007.

MANMOHAN, J

NOVEMBER 07, 2017