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

+ CS(COMM) 1050/2016 & IA No. 4122/2017 (under Order 23 Rule 3 CPC)

RAJESH BHATIA

..... Plaintiff

Through: Mr. Udyan Srivastava, Proxy Advocate
with plaintiff in person.

versus

EAGLE FASTENERS (P) LTD & ANR Defendants

Through: Ms. Aayushi Gupta, Advocate with
D-2 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **31.03.2017**

1. This suit for specific performance and consequential reliefs in the nature of declaration and injunction (mandatory and permanent) was filed in August, 2016 by the plaintiff (Rajesh Bhatia son of Shri Mohan Lal Bhatia) impleading the two defendants, they being Eagle Fasteners (P) Ltd. (first defendant) and Mr. Ashok Lakhwani (second defendant). The first defendant is the owner of the subject property, it having been described as property bearing No. 57/3, Block A, admeasuring 976.30 sq. yards situated at Okhla Industrial Area Phase II, New Delhi-110019 (the suit property). The second defendant is a Director of the first defendant which is the owner of the suit property. The suit was instituted primarily with reference to Agreement to Sell dated 05.04.2016 which had been earlier executed by the second defendant for and on behalf of the first defendant in favour of the plaintiff agreeing to sell the suit property for a consideration in the sum of Rs. 9.25 crores, a sum of Rs. 1.85 crores having been paid as earnest money on

05.04.2016 itself, the balance agreed to be payable at the time of execution and registration of the Sale Deed. It appears the defendants had issued legal notice dated 20th May, 2016 purporting to terminate/cancel the Agreement to Sell dated 05.04.2016 which, *inter alia* gave rise to cause of action for the suit to be filed.

2. After the presence of the defendants had been secured, with consent of both parties, they were referred to Delhi High Court Mediation and Conciliation Centre for exploring the possibility of amicable resolution of the dispute. The parties have entered into Settlement Agreement through mediation on 20th January, 2017, the said original Settlement Agreement having been placed on record by the mediator. It is on the basis of the said Settlement Agreement that a joint application under Order 23 Rule 3 CPC (IA No. 4122/2017) has been filed by both parties seeking a decree to be passed in its terms. The application has been signed by the plaintiff and his counsel on one hand and by the second defendant for himself and on behalf of first defendant, and their counsel, on the other. The application is also supported by their respective affidavits, copy of the Settlement Agreement forming part of the application.

3. The relevant terms and conditions on which the parties have agreed to resolve the dispute are set out in the Settlement Agreement, and in the joint application, as under:-

(a) That it has been agreed by and between the parties hereto that they would proceed with the execution of the Sale Deed in terms of the Agreement to Sell entered into between them on 05.04.2016, subject however to certain revised terms as mentioned hereinafter.

(b) That it has been agreed by and between the parties that the sale consideration of Rs. 9.25 crores initially agreed by them under the Agreement to Sell dated 05.04.2016, shall now stand revised to an agreed sum of Rs.9.00 crores (and not Rs. 9.25 crores). It is also agreed and acknowledged between the parties

that the first party/plaintiff has already paid, as earnest money, a sum of Rs. 1.85 crores on 05.04.2016 itself (i.e.at the time of execution of the Agreement to sell), to the second party / defendants which they duly acknowledge. Therefore, the balance sale consideration which is now agreed to be paid by the first party / plaintiff to the second party / defendants is Rs.7.15 Crores; which consideration the first party / plaintiff has agreed to pay to the second party / defendants at the time of execution and registration of the sale deed before the office of the concerned Sub-Registrar, and in the manner mentioned hereinafter.

(c) It has also been agreed by and between the parties hereto that the amount of Rs.1,85,00,000/- (Rupees One Crore and Eighty Five Lakhs only) deposited by the First party in pursuance to the order dated 08.08.2016 passed by the Hon'ble Court in the civil suit bearing CS (Comm) No.1050/2016 shall be got released in favour of the second party / defendant no.1; however, it has been further agreed that since the aforesaid order dated 08.08.2016 of the Hon'ble Court directed the aforesaid deposit to be kept by way of a Fixed Deposit Receipt, the interest accrued on the aforesaid FDR of Rs. 1.85 Crores shall be got released in favour of the First party / plaintiff. To this extent, the balance amount of sale consideration i.e. Rs.5,30,00,000/- (Rs.7.15 Crores minus Rs.1.85 Crores) shall now be paid by the first party / plaintiff to the second party / defendant no.1 at the time of execution and registration of the Sale Deed before the concerned Sub-Registrar, New Delhi. The parties are also ad-idem on according their respective no-objections on the release of the aforesaid amounts (as specified above) in favour of each other, before the Hon'ble Court at the time of hearing and disposal of the application to be jointly filed by the parties hereto under the provisions of Order 23 Rule 3 CPC.

(d) That it has also been agreed that the sale deed would be got executed and registered before the office of the concerned Sub-Registrar, New Delhi on or before 15.02.2017 on payment of the balance sale consideration as specified in detail above (as per clause (c) aforesaid.

(e) That the parties have further agreed that all the original documents in the custody of the second party / defendants with respect to the suit property bearing no.57/3, Block A, admeasuring 976.30 square yards, situated at Okhla Industrial Area, Phase-II, New Delhi-110 019 shall be handed over to the first party / plaintiff at the time of registration of the Sale Deed before the

office of the concerned Sub-Registrar, New Delhi. In this regard, the Second Party / Defendants have duly provided the inspection of the original documents of title of the suit property to the first party / plaintiff who is thoroughly satisfied about the said document. A fresh set of photocopies of the said original documents have also been provided to the first party / plaintiff at the time of execution of the present deed.

(f) That both the parties further agree and undertake that they shall move an appropriate joint application under the provisions of Order XXIII Rule 3 CPC for recording of the present compromise before the Hon'ble High Court in the said suit, and at the time of disposal of the said application and on the decree being passed on the basis of the present settlement, the parties hereto shall accord their respective no-objections for release of the amounts mentioned in clause (c) above.

(g) The parties further agree that the second party / defendants have no objection to the refund of the court fees in favour of the first party / plaintiff, for which the Hon'ble Court may consider in terms of Section 16 of the Court Fes Act, 1870 read with Section 89 CPC.

(h) That it has also been agreed by and between the parties, that though the aforesaid Civil suit filed by the first party / plaintiff shall be got decreed in the manner as aforesaid under the provisions of Order XXIII Rule 3 CPC; however, there is a criminal complaint which has also been filed by the first party / plaintiff against the second party / defendants before the concerned court of Metropolitan Magistrate, Saket Courts, New Delhi. The first party / plaintiff agrees and undertakes to withdraw the said criminal complaint from the said Court unconditionally, within a period of ten days from the date of execution of the present Deed. The first party / plaintiff also agree and undertake to withdraw any / all other complaint(s) and / or representation (s), if filed by him before any other authority or court of law, within the said period. In fact, both the parties hereby agree and undertake that all disputes and differences between them have been amicably settled and the present compromise shall put an end to all the disputes between them arising out of the Agreement to sell dated 05.04.2016”.

4. As submitted by the learned counsel appearing for the parties today, the parties accompanying them in person, in the Settlement Agreement, it had

been resolved that the Sale Deed would be executed and registered before the concerned Sub-Registrar, New Delhi on or before 15.02.2017. Since the parties could not take appropriate steps for moving the application at hand well in time, the Settlement Agreement, as per their joint request, is to be read as modified so as to treat the date on or before which the Sale Deed is to be executed and got registered as 10.04.2017.

5. Having heard both sides and having gone through the record, this Court is satisfied that the Settlement Agreement arrived at by the parties is lawful. With the modification as to the date on or before which the Sale Deed is to be executed, now to be read as 10.04.2017, the prayer is granted. The suit is decreed in the above terms, holding the parties bound by their respective undertakings.

6. It appears that, pursuant to earlier orders, the plaintiff had deposited an amount of Rs. 1.85 crores in a fixed deposit receipt in the registry. As per the Settlement Agreement, the principal amount of Rs. 1.85 crores is to be released in favour of first defendant i.e. Eagle Fasteners (P) Ltd., owner of the property while the interest accrued on the said fixed deposit receipt is to be released to the plaintiff, the balance of the consideration being payable at the time of execution /registration of the Sale Deed. The registry shall act accordingly

7. Decree sheet shall be drawn up accordingly.

8. The court fees shall be refunded as per rules in terms of Section 16 A of Court Fees Act, 1870.

9. The date fixed i.e. (27.04.2017) fixed earlier stands cancelled.

10. Copy of the order *dasti*.

R.K.GAUBA, J.

MARCH 31, 2017/nk