

\$~28

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 1424/2016
M/S TAXMANN PUBLICATIONS PVT LTD Plaintiff

Through: Mr. Arvind Bhatt and Mr. Saurabh
Kansal, Advocates

versus

M/S JAINA BOOK AGENCY & ORS Defendants
Through: Mohd. Azhar, Advocate

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER
% **16.01.2017**

This commercial cause was instituted in September 2016 by the plaintiff seeking the following reliefs against the three defendants, they being M/s. Jaina Book Agency (defendant no.1), Mr. Avinash Nanda (defendant no.2) and Mr. Amit Nanda (defendant no.3).

*“(i). The plaintiff prays that a decree for recovery of Rs.1,94,53,463.14/- (Rupees One Crore ninety four lakhs fifty three thousand four hundred sixty three and paisa fourteen) be passed in favour of plaintiff against defendants no.1 to 3 jointly and severally;
(ii). Pendente lite and future interest @ 18% per annum with half-yearly rests be also awarded”*

Upon the request of the parties they were referred to the Delhi High Court Mediation and Conciliation Centre (Samadhan) where they have entered into a settlement agreement on 14.12.2016, it

having been signed by the authorised representative of the plaintiff as well as defendant no.2 and 3 representing themselves and defendant no.1. The settlement agreement in original was placed before the court by the mediator.

The terms and conditions of the settlement are set out in the above-said settlement agreement as under :-

“1. The parties have arrived at a settlement whereby the first party has agreed to receive a sum of Rs.1,32,57,487.75/- (Rupees One Crore Thirty Two Lakhs Fifty Seven Thousand Four Hundred Eighty Seven and Seventy Five Paisa only) in full and final settlement of its entire claim as prayed for in CS (COMM) 1424/2016.

2. The second party in discharge of the said liability of Rs.1,32,57,487.75/- (Rupees One Crore Thirty Two Lakhs Fifty Seven Thousand Four Hundred Eighty Seven and Seventy Five Paisa only) has agreed to pay the same to the first party in the following manner :-

a). The second party owns a flat bearing number 4/1004, Thakur Village, Near Thakur Cinema, Kandivali East, 400 001, along with two parking spaces (hereinafter referred to as subject property), in joint names of Mr. Avinash Nanda and Mr. Amit Nanda which is in their power and possession.

b). The Second Party has represented to the First Party that the aforesaid flat is free from encumbrances or any charges, except a loan against subject property to the tune of Rs.66,39,071.77/- (Rupees sixty six lacs, thirty nine thousand, seventy one and seventy one paisa only) as on 15.11.2016 with Deutsche Bank, Goregaon branch, Mumbai.

c). The parties hereto have agreed that the second party shall transfer all of their rights in the subject property with two parking spaces, the possession of which already stands handed over to the first party towards partial discharge of second party's legally recoverable and admitted debt in favour of First party. The second party undertakes to execute

all necessary documents by way of sale deed etc. in favour of the first party or its nominee, assigns, etc. within a period of one month from clearance given by the mortgagor bank.

d). The first party has in turn agreed to waive off the interest to the tune of Rs.51,95,975.39/- as claimed in the Civil Suit bearing number CS (Comm) 1424/2016 filed before the Hon'ble High Court of Delhi by the first party. Further the first party has agreed to give a discount for an amount of Rs.10,00,000/- (Rupees ten lacs only) thereby leaving the outstanding principal amount to Rs.1,32,57,487.75/- (Rupees one crore, thirty two lakhs, fifty seven thousand, four hundred eighty seven and seventy five paisa only) i.e. the aforesaid settlement amount.

e). The parties have mutually agreed on valuation of the aforesaid property at Rs.1,66,65,000/- (Rupees One crore, sixty six lacs and sixty five thousand only). The two parking spaces have been valued at Rs.4,00,000/- (Rupees four lacs only). The repairs of the flat carried out by the second party have been valued at Rs.3,35,000/- (Rupees three lacs and thirty five thousand only). Thus, total value of property, parking and the repairs come to an agreed amount of Rs.1,74,00,000/- (Rupees one crore and seventy four lacs only).

f). The second party shall transfer the aforesaid property alongwith two parking spaces (separate agreements) in name of first party or its nominee as desired by the first party and appear before the appropriate authority for said transfer.

g). The second party shall co-operate the first party in arriving at necessary arrangement with the Bank qua the loan amount, so that the aforesaid property could be transferred in name of first party after receiving NOC from the bank.

h). The settlement amount is Rs.1,32,57,487.75/- (Rupees one crore, thirty two lakhs, fifty seven thousand, four hundred eighty seven and seventy five paisa only). The same is being paid by the second party to first party by transferring

his aforesaid property (which includes the cost towards parking and repairs), the value of which has been arrived at with the consent of Rs.1,74,00,000/- (Rupees one crore and seventy four lacs only). Since there is already loan amount of Rs.66,39,071.77/- (Rupees sixty six lakhs thirty nine thousand and seventy one and seventy seven paisa only) payable to Deutsche Bank, after deducting the said loan amount by the first party, the value of the property in the hands of First Party shall come to Rs.1,07,60,928.23/- (Rupees One Crore Seven Lakhs Sixty Thousand Nine Hundred Twenty Eight and Twenty Three Paisa only). Therefore, there shall be a balance amount of Rs.24,96,559.52 (Rupees twenty four lakhs ninety six thousand five hundred fifty nine and fifty two paisa only) which shall be payable by the second party to the first party apart from the transfer of the aforesaid immovable property.

i). The balance outstanding amount of Rs.24,96,559.52 rounded off to Rs.24,97,000/- (Rupees Twenty four lacs and ninety seven thousand only), shall be paid by second party to first party within twenty four months of signing the present settlement agreement by way of post dated cheques, which cheques shall be given by the second party to the first party within a week from the present settlement agreement.

j). The first party shall be liable to pay instalments on the aforesaid property due after 15.11.2016 (installment dated 15.11.2016 stands paid by second party at its liability) either directly to bank or to second party till transfer is effected, as the parties may agree.

k). In addition to the aforesaid amount, the second party shall also be liable to reimburse the first party for the amount of tax deducted at source by the first party on behalf of second party by way of post dated cheque (in addition to amount mentioned in clause h above).

l). In case the second party defaults vis-a-vis the present settlement agreement, the whole original claim including interest less the amount received by first party shall fall due and recoverable immediately against the second party upon

such default.

m). The second party also undertakes to keep the first party indemnified for any claims that may arise qua the subject property in any manner resulting in legal or other expenses to the first party, if any.

n). The second party undertakes that it has paid all the tax liabilities including income tax, wealth tax, property tax, TDS etc. and shall keep the first party indemnified for any incidence of liability falling upon the subject property or the first party due to any default of the second party.

o). By virtue of the present settlement agreement, it is agreed between the parties that CS (Comm) No.1424/2016 be decreed in terms of the present settlement agreement in favour of the first party and at the same time the first party shall take steps to withdraw the criminal proceedings, if any pending, as initiated against the second party.

3. That the parties have further agreed that in future in case any dispute arose qua the present matter, they shall approach the Delhi High Court Mediation and Conciliation Centre before initiating any legal proceedings.

4. By signing this settlement agreement, the parties hereto state that they have no further claims or demands against each other and all the disputes and differences have been amicably settled by the parties hereto through the process of mediation.”

By the application at hand (IA 570/2017) under Order 23 Rule 3 CPC, the parties pray for a decree to be passed in terms of the afore-quoted settlement. The application is supported by affidavits of the authorised representative of the plaintiff and of defendant no.2 and 3 on their behalf and on behalf of defendant no.1.

Having perused the record, it is found that the parties have entered into this settlement voluntarily, out of their own free will and

volition. Thus, the application is allowed.

The suit is decreed in terms of the settlement set out above.

The parties shall remain bound by their respective commitments and undertakings and are left to bear their own costs. The settlement agreement, now marked as Ex. PA shall form part of the judgment and decree.

The pending application also stands disposed of.

Since the suit has been decreed on the basis of the settlement arrived at through mediation, the court fees shall be refunded.

Decree sheet be drawn up accordingly. The file be consigned to record room.

R.K.GAUBA, J

JANUARY 16, 2017

yg