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

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Judgment reserved on : 12.4.2017

Judgment delivered on : 18.4.2017

CS(COMM) 1295/2016

KOHLI ONE HOUSING & DEVELOPMENT PVT.LTD..... Petitioner

Through Mr.Shailen Bhatia and Ms.Priyanka
Anand, Advocates.

versus

DR.DHANANJAYAN KG

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICEINDERMEET KAUR

INDERMEET KAUR, J.

1 Plaintiff is a private limited company having its registered office at 3, Shivaji Marg, Westend Greens, Rangpuri, New Delhi. The main object of the plaintiff was to purchase and develop real estate and buildings etc. The directors of the plaintiff were introduced to the defendant by a broker by the name of Sunil Choudhary. Pursuant to the meetings between the plaintiff and the defendant, the defendant, who claimed himself to a real estate owner,

had agreed to sell 300 acres of land in Village Badshahpur and Medawas of Gurgaon District to the plaintiff. Defendant had impressed upon the plaintiff that he is the owner of the aforementioned land besides other huge passages of land owned by him in Delhi and in the NCR. The defendant exhibited a high life style.

2 In this background the plaintiff had agreed to purchase this aforementioned land pursuant to a due diligence of the documents conducted by the plaintiff. Defendant promised to supply all the requisite papers to the plaintiff. Plaintiff paid a sum of Rs.3,00,00,000/- accordingly. A sum of Rs.2,00,00,000/- was paid vide cheque dated 28.10.2006 and the balance sum of Rs.1,00,00,000/- was paid by cash on the same date. This was after the withdrawl of the cash from the bank account of Sudarshan Kohli, the director of the plaintiff company. A receipt of all the aforementioned payments was given to the plaintiff.

3 Contention of the plaintiff is that defendant has duped the plaintiff and did not thereafter hand over the requisite papers pertaining to the land which was the subject matter of the suit. Thereafter the defendant even stopped responding to the calls of the plaintiff. Plaintiff made enquiries from Registrar of Companies and learnt that no land was owned by the defendant

as alleged by him. There was also every likelihood that the defendant would flee from country. The present suit claiming Rs.3,00,00,000/- along with the pendent (space) lite interest was filed.

4 Defendant was served. He filed a written statement. Contention was that the suit has been falsely filed. The defence set was that the bhumidhars of the land in question had agreed to give this land to the defendant at low rates and the plaintiff had then agreed to purchase this land from the defendant. It was at the asking of the plaintiff that various agreements to sell were entered into by the defendant with these bhumidars and earnest money had been paid by the defendant to them. The defendant was in fact acting as an agent of the plaintiff in facilitating these transactions on behalf of the plaintiff. Defendant had made payment of Rs.3,70,00,000/- collectively as earnest money to various such persons. A sum of Rs.70,00,000/- is in fact due from the plaintiff. It would be relevant to note that the defendant has otherwise not denied that he has received the sum of Rs.3,00,00,000/- from the plaintiff.

5 On 21.7.2010 issues were framed; they read as under;

1. Is the plaintiff entitled to a decree for a sum of Rs.6 crores against the defendant as claimed?OPP
2. Is the plaintiff entitled to interest, if so, at what rate, on what sum

and for what period?OPP

3. Relief.

6 Plaintiff filed his affidavit by way of evidence but thereafter the defendant chose not to appear. He did not cross-examine the witnesses of the plaintiff. On 29.9.2011 it had been recorded that the defendant had been declared a proclaimed offender in FIR No.265/2009 (Economic Offence Wing). The defendant thereafter moved an application under Order IX Rule 7 of the Code of Civil Procedure which was after the plaintiff had filed an application under Order XXXVIII Rule 4 of the Code seeking attachment of the property of the defendant. Defendant was at that time in judicial custody. He was thereafter granted bail but he again chose to absent himself. The plaintiff in support of his case had filed his affidavit by way of evidence supported by documents. Mark-A was the cheque vide which payment of Rs.2,00,00,000/- was made by the plaintiff to the defendant. Ex.PW-1/4 was the bank statement of the plaintiff company evidencing a sum of Rs.1,00,00,000/- paid by the plaintiff to the defendant. Ex.PW-1/5 was a hand written receipt in respect of payment of Rs.3,00,00,000/- (Rs.2,00,00,000/- by the cheque and Rs.1,00,00,000/- by cash) by the plaintiff to the defendant. The balance sheet of the company Ex.PW-1/10 reflected that interest was due and payable from the defendant.

7 The witnesses of the plaintiff had not been cross-examined. There was also no denial to the fact that a sum of Rs.3,00,00,000/- had been paid by the plaintiff to the defendant. The defence set up was that the defendant was acting as an agent of the plaintiff and he had received this money from the plaintiff to enter into transactions with the bhumidars of the land in question on his behalf; that he had paid amounts to the said bhumidars which was over and above the sum of Rs.3,00,00,000/- (Rs.3,70,00,000/-), was a defense never substantiated by him. Neither did the defendant cross-examine the witnesses of the plaintiff and nor did he enter into the witness box to adduce his evidence.

8 Record shows that this case has a chequered history. In the written statement it has been admitted by the defendant that Rs.3,00,00,000/- had been paid to him by the plaintiff but his implausible defence that this sum had been paid to the bhumidars on behalf of the plaintiff, at the cost of repetition was never proved. Plaintiff has been able to prove his case. He is entitled to a decree.

9 There was no contractual rate of interest. Interest claimed at rate of 24% per annum is excessive.

10 The suit of the plaintiff is accordingly decreed in the sum of

Rs.3,00,00,000/- with interest @ 9% per annum which shall be payable to the plaintiff by the defendant from the date of filing of the suit till its recovery. Suit is decreed in the aforementioned terms. Decree sheet be drawn.

INDERMEET KAUR, J

APRIL 18, 2017/ndn

