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

\+ **RFA No. 654/2017**

% **21th September, 2017**

RAJESH ..... Appellant

Through: Mr. Samir Jha and Mr. Vivek Dagar, Advocates.

versus

M/s PIENNE INDUSTRIAL CONSULTANTS PVT. LTD. ..... Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 26342/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

C.M. Appl. No. 26341/2017 (for extension of time to file Court fees)

Since Court fees has been deposited by the appellant, the C.M. stands disposed of.

C.M. Appl. No. 26340/2017 (for delay)

This is an application seeking condonation of delay of 79 days in filing the appeal.

For the reasons stated in the application the same is allowed and the delay of 79 days in filing the appeal is condoned.

C.M. stands disposed of.

RFA No. 654/2017 and C.M. Appl. No. 26339/2017 (for stay)

1. This Regular First Appeal is filed under Section 96 of the Civil Procedure Code, 1908 (CPC) by the defendant in the suit impugning the judgment of the trial court dated 1.2.2017 by which the trial court has decreed the suit for specific performance, injunction, etc. under Order XII Rule 6 CPC.

2. The facts of the case are that the respondent/plaintiff filed the subject suit for specific performance seeking specific performance of the agreement to sell dated 1.6.2011. Originally the agreement to sell between the parties was entered into on 20.4.2011 and thereafter the fresh agreement to sell dated 1.6.2011 superseded the first agreement to sell. The subject matter of the agreement to sell, and therefore the suit is 1/8th share of the appellant/defendant in the suit property comprising total land of 36 bighas and 5 biswas situated in Khasra no. 24/11(South)(1-2), 20(South)(2-3), 21(South)(2-3)25//15(East)(2-6), 16(East)(4-13), 25 (East)(4-13), 26//17(South)(0-6), 18(South)(1-12), 23(4-14), 24(4-16), 28//4(North)(2-1),

29//5(East)(4-5) and 13//1(1-11) within the revenue estate of Village Badu Sarai, Tehsil Kapashera, New Dehli. As per the agreement to sell dated 20.4.2011 total sale consideration was Rs.1,01,35,000/-. Respondent/plaintiff is pleaded to have paid a sum of Rs.50,00,000/- at the time of entering into the agreement to sell dated 20.4.2011. Respondent/plaintiff pleaded further payment of Rs.5,00,000/- on 12.5.2011 and the entire balance sale consideration by 1.6.2011 in terms of the following cheques:-

> "(i) Rs.14,50,000/- through cheque No. 580681 dated 21.4.2011 drawn on Syndicate Bank, Bijwasan, New Delhi in favour of defendant i.e. Rajesh paid on 20.4.2011.
> (ii) Rs.50,000/- in cash to defendant on 20.04.2011.
> (iii) Rs.5,00,000/- through cheque No. 874295 dated 12.5.2011 drawn on The Bank of Rajasthan, Kailash Colony, New Delhi in favour of defendant i.e. Rajesh paid on 12.05.2011.
> (iv) Rs.81,35,000/- through cheque No. 005163 dated 01.06.2011 drawn on ICICI Bank Ltd., Kailash Colony, New Delhi in favour of defendant i.e. Rajesh paid on 01.06.2011."

3. It was the further case of the respondent/plaintiff that on receipt of the entire sale consideration a fresh agreement to sell dated 1.6.2011 was entered into by the parties and when also a Special Power of Attorney was given in favour of Sh. Vidhu Sharma who was the son of Sh. Prem Raj Sharma, Director of the respondent/plaintiff company, and which Power of Attorney is a registered Power of Attorney. Respondent/plaintiff company pleaded that the

appellant/defendant wrongly has sought to cancel the registered Power of Attorney and cancellation of the registered Power of Attorney was refused by the Sub-Registrar vide his order dated 20.3.2015. Respondent/plaintiff pleaded that appellant/defendant had no right to cancel the registered Special Power of Attorney dated 1.6.2011 issued in favour of Sh. Vidhu Sharma and since the appellant/defendant has received the entire sale consideration the suit for specific performance should be decreed.

4. The appellant/defendant filed his written statement and did not deny execution of the agreement to sell dated 20.4.2011 as also the subsequent agreement to sell dated 1.6.2011. The appellant/defendant also does not deny receipt of the sale consideration of Rs.1,01,35,000/-. The appellant/defendant however pleaded that the total sale consideration was not Rs.1,01,35,000/- but was Rs.3.20 crores. The appellant/defendant pleaded that there was still a remaining amount of Rs.2,18,65,000/-.

5. After pleadings were complete the trial court framed the following issues on 3.9.2016:-

> "1. Whether the sale consideration of the suit property i.e. agricultural land measuring 4 bigha 10 biswas and 13 biswansi situated in village Badu

Sarai, Tehsil Kapashera, New Delhi was fixed by the parties as Rs.1,01,23,000/- (Rupees One Crore One Lac and Thirty Five Thousands), as contended by the plaintiff or as Rs.3,20,00,000/- (Rupees Three Crores and Twenty Lacs), as contended by the defendant? ….. Onus on parties.

2. Whether the plaintiff company had been put in possession of the suit property by the defendant? …….. OPP

3. Whether the plaintiff is entitled to decree of specific performance of the agreement to sell dated 20.04.2011, as prayed for? …… OPP

4. Whether the plaintiff is entitled to decree of declaration, as prayed for? …… OPP

5. Whether the plaintiff is entitled to decree of mandatory injunction, as prayed for? …… OPP

6. Whether the plaintiff is entitled to decree of permanent injunction, as prayed for? …… OPP"

6. The respondent/plaintiff thereafter filed the subject application under Order XII Rule 6 CPC and which has been allowed by decreeing the suit by the impugned judgment dated 1.2.2017 and hence the present appeal. I may note that there was an issue of limitation decided by the trial court in favour of the respondent/plaintiff, and which issue is not urged/challenged on behalf of the appellant/defendant before this Court.

7. Learned counsel for the appellant/defendant has very vehemently argued that once issue no.1 was framed as to whether the sale consideration was or was not Rs.1,01,35,000/- (wrongly written as Rs.1,01,23,000/- in the issues), the trial court erred in decreeing the suit under Order XII Rule 6 CPC because this was a disputed question of fact which required trial as to whether the total sale consideration

was Rs.1,01,35,000/- or Rs.3.20 crores as was case of the appellant/defendant.

8. In my opinion, the argument urged on behalf of the appellant/defendant is barred by the provisions of Sections 91 and 92 of the Indian Evidence Act, 1872 inasmuch as, once there is a written agreement between the parties containing the terms of transactions, then, a party who is a party to the written document cannot plead that the transaction is not what is stated in the written contract/agreement. In sum and substance, Section 92 of the Indian Evidence Act prevents a signatory to a contract to dispute the contents of the written terms. Written terms can only be disputed in terms of the Provisos to Section 92 of the Indian Evidence Act and appellant/defendant has not pleaded his case to fall under any of the Provisos to Section 92 of the Indian Evidence Act and hence there is no such issue in the facts of the present case. I completely agree with the observations of the trial court as regards the applicability of Sections 91 and 92 of the Indian Evidence Act and the relevant paras of the impugned judgment, in this regard, are paras 21 to 23 and which paras read as under:-

> "21. I am in agreement with the contentions of the ld. Counsel for the plaintiff that the defence of the defendant that the sale consideration was fixed at Rs.3,20,00,000/- does not merit any consideration for the reason that

it is contrary to the contents of the admitted documents executed between the parties. Once the defendant has admitted the execution of agreement to sell, receipt, possession letter, affidavit/undertaking and special power of attorney with regards to the suit property in favor of the plaintiff company wherein the sale consideration is mentioned as Rs.1,01,35,000/- only and he has also admitted his signatures on all these documents, it is not open to him to controvert the contents of these documents and to take a contrary stand. It has been held by the High Court in the case of **Parivar Sewa Sansthan (Supra)** that any plea raised against the contents of documents, only for delaying the trial, being barred by Section 91 and 92 of Evidence Act or other statutory provisions, can be ignored. Therefore, the aforesaid plea raised by the defendant being contrary to the contents of the admitted documents executed between the parties, is clearly barred by Section 91 & 92 of the Evidence Act and hence has to be ignored. Moreover, no material has been placed on record by the defendant to show that the sale consideration was actually arrived at Rs.3,20,00,000/- and not Rs.1,01,35,000/- as stated by the plaintiff.

22. Therefore, in view of the admitted documents executed between the parties as mentioned herein above, the case of the plaintiff company stands admitted in its entirety by the defendant and the plaintiff company has become entitled to judgment u/O XII Rule 6 CPC.

23. It is limpid from the admitted documents filed on record, which have been executed between the parties, that the entire sale consideration of Rs.1,01,35,000/- (One Crore One Lakh Thirty Five Thousand) stands paid by the plaintiff company to the defendant and the defendant has also handed over the possession of the suit property to the plaintiff. Only a regular sale deed remains to be executed between the parties. Considering the admitted facts on record, no dispute survives for adjudication and there does not appear to be any impediment in passing a decree in favour of the plaintiff company on the basis of these admitted facts."

9. Learned counsel for the appellant/defendant further argued that agreement to sell dated 1.6.2011 talks of receipt of possession of the suit property and such an agreement therefore being unregistered and unstamped could not be looked into by the trial court. In my opinion, not only such an issue has not been raised before the trial court and no such issue has been got framed, even assuming such

an issue was framed, the same had to be decided in favour of the respondent/plaintiff because an unregistered and unstamped agreement to sell cannot be looked into so as to base a claim thereupon under the doctrine of part performance contained in Section 53A of the Transfer of Property Act, 1882 but an unregistered agreement to sell can always be looked into in a suit seeking specific performance of the agreement to sell. This is made clear by the Proviso to Section 49 of the Registration Act, 1908. Therefore, in my opinion the argument urged on behalf of the appellant/defendant that the respondent/plaintiff could not file the suit for specific performance on the basis of an unregistered agreement to sell is a misconceived argument and is hereby rejected.

10. In view of the above, there is no merit in the appeal and the same is hereby dismissed.

SEPTEMBER 21, 2017 **VALMIKI J. MEHTA, J**

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